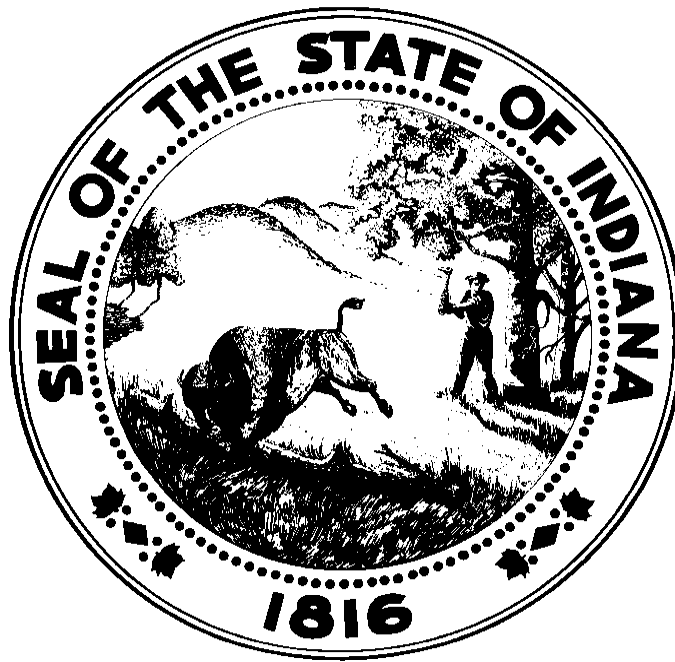


***2011 Professional Services  
Contract Manual***

***July 2011***



***OFFICE OF THE INDIANA ATTORNEY GENERAL***

***Gregory F. Zoeller, Attorney General***

***INDIANA DEPARTMENT OF ADMINISTRATION***

***Robert D. Wynkoop, Commissioner***

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## **Introduction**

The Office of the Indiana Attorney General and the Indiana Department of Administration are pleased to present the *2011 Professional Services Contract Manual*.

The Manual is intended to assist State agencies in the preparation of professional services contracts and to provide information on how contracts and grant agreements should be submitted through the approval process.

Please review the Manual carefully. It will guide you in the preparation of personal/professional service contracts and grant agreements. If your agency has a staff attorney, you should contact him or her first regarding any questions you may have. If you still have questions, please feel free to contact a member of the IDOA Contract Management Section.

### **Department of Administration Contract Management Section:**

Tony Green	(317) 234-1596	<a href="mailto:agreeen@idoa.in.gov">agreeen@idoa.in.gov</a>
Sandra Redding	(317) 232-3153	<a href="mailto:contracts@idoa.in.gov">contracts@idoa.in.gov</a>

### **Office of the Attorney General – Advisory Division**

Matthew Light	(317) 232-6333	<a href="mailto:matt.light@atg.in.gov">matt.light@atg.in.gov</a>
Alice Davidson	(317) 234-1912	<a href="mailto:contracts@atg.in.gov">contracts@atg.in.gov</a>

If you have suggestions for improving the Manual or the contract review process, please let us know!

## **Frequently Asked Questions**

**Do I need an EDS (Executive Document Summary) with every contract I submit?** Yes. A contract cannot be routed through the signature process without a fully completed EDS. The EDS form is available on-line through PeopleSoft Financials. Use of the EDS sheet is covered in greater detail later in this Manual.

**How do I assign an EDS number to an agreement?** Each agency is assigned one or more APS (Automatic Procurement System) codes to begin the EDS number. The APS code usually consists of a letter followed by two or three numbers (*i.e.*, IDOA's code is C39). The EDS number consists of (1) an APS code, (2) fiscal year (which runs July 1 – June 30; fiscal year '12 began July 1, 2011), and (3) a combination of letters or digits in an order that your agency finds most helpful in contract management. If you do not know your agency's APS code, you should send an e-mail to [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov). We will assist you in getting that information.

**If the vendor is an individual, should I list their personal identification number on the EDS sheet?** Contracts and the EDS sheets are public records. You should ensure that these documents do NOT include an individual's social security number. A State employee commits a **Class D Felony** if he /she knowingly, intentionally, or recklessly discloses a Social Security Number ("SSN") in violation of **Indiana Code 4-1-10**. The negligent release of a SSN may result in conviction for a **Class A Infraction**. Moreover, all contracts are scanned and are available on line after they are approved.

**What documents, in addition to the contract, are needed for approval?** In addition to the contract, any exhibits or attachments referenced in the contract must be submitted for approval. If you are submitting an amendment or renewal, you MUST include the underlying contract and all of its exhibits and attachments.

**Can I draft clauses outside of the boilerplate?** Absolutely. While the Manual outlines clauses that are mandatory in Contracts, it really provides a basic framework for your Contracting needs. Consult with your agency attorney regarding additional clauses.

**Can I renew or amend a contract after the expiration date?** No. An expired contract or grant cannot be renewed or amended. If you want to renew or amend a contract or grant, you must have the contractor's (or grantee's) signature on the renewal or amendment prior to the expiration of the original contract. If you are doing a straight renewal where no consent or agreement of the contractor is required, then the signature of the agency is required prior to the expiration of the underlying term.

**Do I need a Non-Collusion Statement in an Amendment or a Renewal?** Yes, always. This clause must be included in all amendments and/or renewals. The ability to collude becomes greater once a relationship has been established with a contractor or grantee.

**What is the difference between an Amendment and an Addendum?** An Amendment changes or adds to the terms or conditions of an existing contract. An Addendum is to be attached to a contractor's form contract for purposes of deleting terms to which the State cannot agree and adding the mandatory clauses required in any State contract. **The State should NOT sign the form contract – only the Addendum.**

**Do I need to seek competition when selecting a vendor?** Absolutely. Analysis and discussion of the procurement process and the use of RFPs and bids is beyond the scope of materials covered in this Manual. You should become thoroughly familiar with IC 5-22 if there is any question about the type of competition and procurement you should use in pursuing a particular contract. Even Special

Procurements under IC 5-22-10 require competition, documentation, and the approval of IDOA's Commissioner.

**My contract has been pre-approved by the Attorney General's Office but denied by IDOA. How can that happen?** IDOA and the OAG serve different functions in the contract approval process. While the OAG reviews contracts for form and legality, IDOA focuses on policy, contract language and procedures, and business issues. Just because the contract is legal does not mean that underlying transaction is consistent with the State's policies, purchasing procedures, or that it is in the State's best interests.

**Does IOT need to approve my contract?** Any contract that includes information technology goods or services must be reviewed by IOT so that IOT can ensure that the goods and/or services are compatible with the State's policies and current IT investment. Examples include the procurement of hardware, software and software licenses and maintenance agreements, software application development, website development, database access through the internet, and data sharing. Moreover, outsourcing data entry contracts almost always involve IT issues. IOT's IT policies, standards and guidelines are available at <http://www.in.gov/iot/architecture>. If you are unsure about whether your contract will require IOT approval or if you have any other questions, please contact IOT at [contracts@iot.in.gov](mailto:contracts@iot.in.gov) and (317) 232-3172.

**Can I have a contract for more than four years?** It is IDOA's policy that a contract shall not exceed four years. If, however, you have a compelling business reason to exceed the four-year limit, you may do so, but you must first obtain written approval from the IDOA Contract Administration. This approval should be sought well in advance of the expiration of an existing contract.

**What do I do when I need to rush through a contract?** Send an e-mail to [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov), to [jorebaugh@sba.in.gov](mailto:jorebaugh@sba.in.gov), and to [contracts@atg.in.gov](mailto:contracts@atg.in.gov). You will need to provide the EDS number, name of Contractor, the reason for requesting the rush, and the anticipated delivery time to IDOA. Please do not show up with a rush and expect to wait while someone reviews it. Also, do not have a vendor call direct. If you give us advance notice and a reasonable explanation, we will make every effort to accommodate you.

**Can I submit a contract with faxed or stamped signatures?** No. Only contracts with original signatures will be approved.

**Can I submit a contract without a vendor signature?** No. The State should always be the last party to sign the contract. The OAG must be the last party to sign the contract or it will be rejected unless it was granted form approval by the OAG. In cases where the OAG has granted form approval, IDOA and Budget must be the last entities to sign.

**What is the policy on approving duplicate originals?** IDOA, Budget, and the OAG strongly discourage the routine use of duplicate originals. We anticipate requiring those few agencies that seem to use them routinely to justify why two or more originals are necessary.

**Do I have to print my contract on double-sided paper?** Executive Order 05-21 requires that all "[a]gencies shall duplex (double side) all copy and laser printing operations. Exceptions will be made when current technology does not allow for this provision or when specific documents require single-side printing."

**How does the scanning process work?** Once a contract has been approved by the OAG, it is picked up by Pitney Bowes Management Services, scanned, and returned to IDOA. IDOA will notify you via email when the contract(s) is/are ready to be picked up.

### **Contract Approval Process**

Indiana Code section 4-13-2-14.1(a) requires that, after signature by the vendor and the agency, contracts must be approved by (1) IDOA, (2) the State Budget Agency (“Budget”), and (3) the Office of the Attorney General (“OAG”). Unless your agency has specific delegated authority from IDOA or Budget, or is using a specific contract that has been given written form approval by the OAG within the last 12 months, it will have to be circulated through these 3 agencies for approval.

Sufficient lead-time should be given when preparing a contract so it can be reviewed and executed by the approving agencies. We suggest allowing 60 days for this process. IDOA tries to review each contract within five (5) working days of receipt, as does Budget. By statute, the Office of the Attorney General is allowed forty-five (45) days to review a contract; however, the Advisory Division tries to do all reviews within 10 business days of receipt.

When you have assembled the fully signed contract (or grant) with all attachments and exhibits, the tax clearances, and the Indiana Economic Impact form (when applicable), put the completed EDS sheet on the top, and deliver it to IDOA’s reception area (IGCS, 4<sup>th</sup> floor, Room W 479). Unless you include other instructions, the contract will be forwarded to Budget, and Budget will forward it to the OAG.

Once a contract has been approved by the OAG, it is picked up by IDOA and sent to scanning. This process is typically accomplished overnight, and the scanned contract is returned to IDOA. You will be notified when it is available for pickup at IDOA (IGCS, 4<sup>th</sup> floor, W 479).

Requests for copies of contracts prior to scanning must go through Sandra Redding and should be reserved for emergencies only.

**Because all contracts are scanned, it is important for the agency to submit only information and documents that are appropriate for public disclosure. No contract submissions should include an individual’s social security number or information classified as confidential either by state law, by your agency, or by a vendor. Refer to the Access to Public Records Act, IC 5-14-3-4, or contact the Public Access Counselor if you are uncertain about disclosable and non-disclosable information.**

### **Required Signatures**

The following parties may need to sign

1. Vendor/Grantee—Required on all contracts/grants
2. Agency—Required on all contracts/grants
3. IOT—Required on contracts/grants when information technology goods or services are involved.
4. IDOA—Required on all contracts/grants unless authority has been delegated to the agency
5. Budget—Required on all contracts/grants unless authority has been delegated to the agency
6. OAG—Required on all contracts/grants unless contract has been given form approval. Note: Contract renewals do not require OAG signature as long as the renewal does not change the terms of the contract.

## **Intranet Contract Tracking System**

The Contract Tracking System (“KMS”) has been designed to help agencies locate their contracts as they make their way through the signature process. This system is only available on the Intranet. Once the contract has been entered into KMS, you can retrieve information regarding the status of that contract.

1. To access the contract search site on the Intranet take the following steps:
2. Open your web browser and go to <http://intranet.doit.state.in.us/IDOA/CSS>.
3. Go to the drop down box in the upper right corner of the web page and select **Contract Search**.
4. When the “Welcome” page appears, read and click **Continue**.
5. You have reached the search criteria. Choose how you want to search, *i.e.* EDS number, Contractor’s name, etc.
6. Click Search and the search results will appear.
7. To locate the routing information, click on the EDS number.

If you are unable to access the Intranet, please e-mail [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov), or call Sandra Redding at (317) 232-3153.

## **Office of the Attorney General**

Indiana Code section 4-13-2-14.3 provides that the OAG “must review for form and legality contracts to which a state agency is a party....” Contract reviews are done by Deputy Attorneys General assigned to the Advisory section of the office. If the OAG finds a contract does not meet form and legality requirements, the contract must be disapproved in writing, with an explanation of how it is legally defective, and advice on how to make it compliant. The same statute gives the OAG up to 45 days to conduct this review.

If you have a contract that needs to be rushed, you should contact the OAG via e-mail at [contracts@atg.in.gov](mailto:contracts@atg.in.gov). Include the EDS # of the contract and an explanation of why the rush is required. Do not tell one of your vendors or contractors to contact the OAG directly. The OAG will not respond to direct inquiries from contractors, and will refer all such inquiries back to the originating agency. The OAG should never be expected to approve a contract the same day it is received by the OAG.

## **Form Approval and Pre-Review - Frequently Asked Questions**

**What is the difference Between a Form Approval and a Pre-Reviewed Contract?** A form approval is a template form which may be used by an agency for one year from the date of approval. Contracts entered into within that year using the approved form do not have to be reviewed by the Attorney General for form and legality. No changes can be made to the approved form other than filling in the template blanks.

A pre-reviewed contract typically involves an out-of-the ordinary situation where the agency wants to make sure that once the contract is signed by the agency and the vendor, it will not be rejected by the OAG on a legality issue. A Deputy Attorney General (“DAG”) in the Advisory Division will pre-review

drafts and make suggestions so that when the contract is submitted for final approval, it will not be rejected, assuming all suggested legal changes are incorporated.

**What are the advantages in using form approval?** Use of form approved contracts has the advantage of speeding up the contract approval process and providing the contracting state entity with a consistent legal document that is lawful as to form and content. The form approved contract is intended for use when a contracting state entity anticipates a high number of contracts for the same purpose/services with different contractors. Once form approval is obtained, the individual contracts using the approved form do not have to be reviewed and signed by the OAG. Eliminating the OAG from the contract signature process potentially saves up to 45 days in the approval process since by state statute the OAG has 45 days to review contracts.

### **Requirements for Form Approval**

**Form Approval Automatic Denials.** As a matter of policy, the OAG will not give form approval for contracts when the Department of Administration has delegated approval and signature authority to the state entity that generated the contract.

### ***Form Approval Request Sheet***

A Form Approval Request Sheet must be submitted with all requests for form approval. The completed form must be signed by legal counsel for the agency. **You must submit one request sheet per contract.** A completed form is considered “signed” if e-mailed by anyone from the agency as a .pdf file with an actual or electronic signature from legal counsel; otherwise, the form must have legal counsel’s name typed in and the e-mail must originate from counsel’s e-mail account. ***If you intend to use mail merge for these contracts*** you **must** indicate this on the request form when submitting the contract for review.

### ***Form Approval Contract Submission***

**Statutory Authority.** The contracting entity’s statutory authority for the contract must be included on the request form. The OAG also strongly encourages referencing the statutory authority in the body of the contract. ***Example (DO NOT USE this as your statutory authority): “This grant is authorized by IC 5-19-1, IC 4-23-7.1 and other laws pertaining to local library systems. Grants will be made to libraries eligible to receive funds under the Library and Services Technology Act, 20 U.S.C. §§ 9121 to 9123.”***

It is the agency’s responsibility to stay apprised of any state or federal law affecting the contract and must notify the OAG immediately regarding a change of law. A change of law immediately invalidates the form approval status and the form should be resubmitted. This does not mean fully executed contracts based on the form become invalid; it means the form must be resubmitted for form approval to continue to use that process.

**State Boilerplate.** A draft of the contract that you are submitting for form approval must be submitted electronically along with the request form. The OAG strongly encourages contracting entities to use the State’s standard boilerplate clauses when drafting contract documents.

**Prepared By Statement.** In order to identify the creator of form approved contracts, a *prepared by* statement is required on the document. This will also satisfy the requirement for instruments that may be received for recording or filing under IC 36-2-11-15. This statement must appear at the bottom of the signature page of the contract.



In addition, an initial block should follow the *prepared by* statement. This is verification that each form approved contract has actually been reviewed by the agency legal counsel before execution. In this way, agency legal counsel ensures the initial and final integrity of the contract.

**Expedited Requests.** Please allow 30 days for review. We cannot guarantee all expedited requests will be granted. Any requests for expedited review must include the effective date of the contract and the reason for expedited review.

**Formatting.** Please follow the format used in the IDOA Professional Services Contract Manual to the maximum extent possible. All attachments should be labeled in alphabetical order beginning with A (ex. Exhibit A, Exhibit B, Exhibit C).

**Approval Letter.** Contracts that have received form approval will have the following statement in place of the regular Attorney General signature block: “*Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on (approval date).*” The OAG will send a letter to the agency legal counsel or primary contact upon approval of the form approved contract. In addition, IDOA will be provided with copies of all form approvals to help monitor the integrity of the process.

**Destruction of Old Forms.** The OAG strongly encourages the agency legal counsel or contact person and all contract writers to destroy all electronic copies of old forms upon receipt of final approval of the new form contract.

**Effective/Expiration Date.** The form is approved for use as of the date of the letter. Approval expires exactly one year from that date. **Note: Amendments or Renewals of contracts with outside counsel must be approved by OAG for the Amendment or Renewal period.**

**Name of Form Approved/Pre-Reviewed Contract.** The OAG, for clarity, will assign a name and number to the form approved contract. When corresponding with the OAG or attempting to renew the form, please use this name and number.

*Contracts that are form approved must still follow the regular state signature process, except they are not submitted to the OAG for signature.*

### ***Use of Form Approved Contracts***

**Changes to Form.** Contracts that have been form approved will be in a template format. This document will have blank spaces for the contractor/grantee name, term, duties, etc. Only the blank spaces may be modified (referred to as a “filled-in form”). **Any other changes to the document are not permitted.** If any new contract provisions become required during the term of the form approval or if the contracting entity determines that other changes are needed in the contract document, the revised form **must be resubmitted** to the OAG for approval. The contracting entity cannot simply change or add language to a previously approved form and continue using the form.

# FORM APPROVAL REQUEST SHEET

*This Space for Office of the Attorney General Use Only*

Attorney Assigned \_\_\_\_\_ Date Approved \_\_\_\_\_

Contract Name \_\_\_\_\_

Contract Number \_\_\_\_\_

Has this contract previously been form approved? \_\_\_\_\_

**Requested due date, effective date of contract, and expedite rationale (if less than 30 days):**\_\_\_\_\_

Name of state contracting entity:\_\_\_\_\_

Contact person:      Name: \_\_\_\_\_      Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Program area/ Purpose of contract: \_\_\_\_\_

State statutory authority for contract: \_\_\_\_\_

Is there federal statutory authority?\_\_\_\_\_ If yes, please specify:\_\_\_\_\_

Estimated number of contracts that will be executed using this form: \_\_\_\_\_

Estimated dollar maximum of each contract (you may give a range): \_\_\_\_\_

Does the contracting entity or will it seek to have delegated authority to approve/sign contracts on behalf of:

DOA\* \_\_\_\_\_ Budget \_\_\_\_\_

Was the contract reviewed and approved by the contracting entity's legal counsel?\_\_\_\_\_

*If no, please explain why:* \_\_\_\_\_

Name of legal counsel:\_\_\_\_\_ Date approved by counsel:\_\_\_\_\_

Will this document will be mail merged?\_\_\_\_\_

## CERTIFICATION

By signing this form, I certify that I understand the conditions for use of form approved contracts as set out in the 2011 Professional Services Contract Manual. I understand that if *for any reason* it is determined by the OAG that the form approval process has been abused, the OAG may revoke the contracting entity's approval for use of all form approved contracts for an indefinite period of time. Abuse may include, but is not limited to, unauthorized changes to an approved contract template, use of a template by an unauthorized person, and continued use of an expired contract template.

Signature  
(Legal counsel; if none, director or commissioner)

---

Printed Name/Title	Date
--------------------	------

Date \_\_\_\_\_

\* Delegation from DOA will result in an automatic denial of form approval.

### **Consent to Hire Outside Counsel**

#### **Statutory Authority for Consent to Hire Outside Counsel:**

- ⇒ IC 4-6-5-3 provides that no agency, except as provided by this chapter, shall have the right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service on behalf of such agency and the state without the written consent of the attorney general.
- ⇒ IC 4-6-2-11 provides that no claim in favor of the state shall be compromised without the approval of the governor and attorney-general, and such officers are hereby empowered to make such compromise when, in their judgment, it is the interest of the state so to do. This authority will not be delegated by the attorney general.

There are various statutory exemptions giving an agency authority to hire its own outside counsel. Please consult the Indiana Code when in doubt.

- ⇒ The OAG now requires that all outside counsel requests be submitted through an online form, available at <http://12.186.81.50/ATGInterApps/OutsideCounselRequestForm.aspx>.
- ⇒ After consent to hire outside counsel has been received, a state contract must be executed. Do not sign a letter of engagement. Please contact the attorney general's office if this situation arises.
- ⇒ All outside counsel amendment and/or renewal requests must be submitted to the attorney general. A new consent letter will be issued for each amendment and/or renewal. A state amendment and/or renewal must be executed following consent.

### **Consent to Hire Outside Counsel on a Contingency Fee Basis**

- ⇒ IC 4-6-3-2.5 establishes the procedures that an agency must follow to enter a contingency fee agreement. The agency must make a written determination that contingency fee representation is cost effective and in the public interest. This determination is included in the online request form referenced above.
- ⇒ Contingency fee agreements are subject to the approval of both the attorney general and inspector general.

## **Guidelines for Ethical Contracting Practices**

Elected and appointed state officials and state employees are entrusted with the safety and welfare of taxpayers. Citizens are entitled to have complete confidence in the integrity of their government and expect State employees' private interests will not conflict with public business. To maintain the integrity and credibility of contracting, a clear set of guidelines, rules and responsibilities to govern the behavior of State employees is required.

General standards of ethical conduct for State employees are enumerated in 42 IAC 1-5-1 through 15; and 42 IAC 1-6-2. A State employee who violates either these statute sections or rules may be subject to State Ethics Commission sanctions and/or agency disciplinary action. Pursuant to 42 IAC 1-7 and 42 IAC 1-8, State employees may have any ethics question reviewed and decided by the State Ethics Commission. If you have a question about a specific action, please contact the State Ethics Commission directly.

For complete information regarding ethical practices in contracting, refer to the Inspector General's website at <http://www.in.gov/ig/> or call the Ethics Commission at (317) 232-3850.

### ***Social Security Number Protection and Breach Notification***

State agencies are required to exercise an enhanced level of due diligence in the protection of social security numbers from public dissemination. It is the agency's responsibility to ensure that individual social security numbers are redacted from all contract documents, including EDS sheets, underlying contracts prepared before the new law took effect, amendments, renewals, supplements, or any other collateral document that is submitted with a contract for approval.

For the specific statutory requirements and exceptions regarding disclosure, please see IC 4-1-10. For the processes that agencies must follow regarding notification in light of a breach, please see IC 4-1-11.

The penalties assessable for the unlawful release of a social security number can range from a Class A infraction up to a D felony, depending on the nature of the release and the actions taken by the agency/employee towards prevention. The OAG has adopted administrative rules under 10 IAC 5 to assist agencies with their compliance efforts.

## **Minority and Women's Business Enterprises Division**

IDOA's Minority and Women's Business Enterprises ("M/WBE") division is established by IC 4-13-16.5. As required by statute, the M/WBE division identifies and certifies minority and women's business enterprises for State projects. The statute also requires "all state agencies, separate bodies corporate and politic, and state educational institutions to report [to the division] on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies," and "determine[s] and define[s] opportunities for minority and women's business participation in contracts awarded by all state agencies, separate bodies corporate and politic, and state educational institutions."

The Division works with the Governor's Commission on Minority and Women's Business Enterprises to establish annual goals for the use of minority and women's business enterprises. These goals are to be derived from a statistical analysis of utilization study of state contracts that are required to be updated every five (5) years. Inclusion of a contractor's utilization of a minority or women's business in the contract itself is a tool used by the M/WBE division to ensure compliance with 25 IAC 5.

## **Employment Eligibility Verification**

All state Contractors for services and recipients of grants of over \$1,000 must enroll in the E-Verify program and affirm that they do not knowingly employ unauthorized aliens. See IC 22-5-1.7-1 et. seq. The U.S. Department of Homeland Security's E-Verify program is a free Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.

All state agencies are required to include the boilerplate "Employment Eligibility Verification" clause in their contracts for services. "Services" are defined in the public purchasing statute at IC 5-22-2-30 as "the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance."

All grants of over \$1,000 must include either the grant agreement clause or the signed affidavit. State agencies are strongly encouraged to use the "Employment Eligibility Verification" clause for their grant agreements. State agencies, in lieu of the grant clause, may elect to have the Grantee sign an affidavit which is also provided in this manual. The affidavit must be attached to the grant agreement.

In addition, state agencies need to ensure that their Contractors and Grantees have enrolled and are participating in the E-Verify program. Contractors and Grantees who are self-employed and who do not have any employees need not enroll or participate in the E-Verify program.

If you are contracting with another state agency, local political subdivision, a state institution of higher education, or another state the clause is not required to be in your contract or grant.

In order to enroll in the E-Verify program Contractors and Grantees may visit: <https://e-verify.uscis.gov/enroll/>

More information on the E-Verify program can be found at: <http://www.dhs.gov/e-verify>.

## **Independent Contractor Determination**

It is your responsibility to ensure all Contractors and employees are appropriately classified. Personal Service contracts which create or appear to create an employment relationship under IRS guidelines cause grave tax consequences for the State and potential inequities to the individuals providing the services. A decision by IDOA to deny a contract due to a determination that an employee status would be created is final. If your contract appears to contain several employee indicators, you may wish to contact an IDOA representative for guidance. Your agency may be required to analyze in writing the service sought in relation to the IRS factors. If so, the agency must retain the analysis and keep it in the particular contract file for audit purposes. The IRS's most recent independent contractor test is located at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

## **Memorandum of Understanding (MOU)**

MOUs are used to memorialize agreements between state agencies, and document an arrangement under which two agencies share a responsibility, or where one agency agrees to perform duties on behalf of the other (where the duties could be within the statutory authority of either agency). The subject matter of a MOU may or may not provide for the transfer of funds between or among agencies. The State Budget Agency's Financial Management Circular #2009-2, dated September 21, 2009 sets out the requirements

for a MOU ([http://www.in.gov/sba/files/fmc\\_2009-02.pdf](http://www.in.gov/sba/files/fmc_2009-02.pdf)). **For the latest circular, please refer to the SBA website:**

<http://www.in.gov/sba/2512.htm>

Due to the possibility of direct or indirect state fiscal impact related to the procurement of goods and services, this Circular is published jointly by the SBA and the IDOA to provide policy and procedural guidance to State agencies regarding financial transactions between or among Executive Branch agencies. This Circular applies to all instrumentalities (hereafter referred to as “State agencies”) of the Executive Branch, excluding all bodies corporate and politic, state educational institutions (as defined in IC 20-12-0.5-1), the Secretary of State, the Auditor of State, the Treasurer of State, the Lieutenant Governor, the Attorney General, and the offices of these separately elected officials.

All MOU’s must be signed by the parties (agencies) to the MOU and SBA.

### **SBA Circulars Relevant to Contracts or MOU’s**

- 98-2 Delegation to IDOA for Procurement Contract Approval under \$25,000
- 2003-1 Travel, Moving, and Interviewing Policies
- 2007-1 Language for Termination of Contracts for Lack of Funds
- 2007-3 Indiana Office of Technology
- 2009-2 Memorandums of Understanding (MOU’s) and Memorandums of Agreements (MOA’s)

### **Is it a Contract, or is it a MOU?**

Agreements between an Executive Branch agency and another unit of government that has the capacity to sue or be sued must be memorialized by a contract that is subject to review under IC 4-13-2-14.1. This includes agreements with the federal government, state universities, school corporations, and local units of government. Such contracts may deviate from the required state boilerplate by deleting clauses inappropriate to another governmental entity.

An arrangement between two or more state agencies that do not have the power to sue or be sued must be memorialized by a Memorandum of Understanding that clearly describes the performance responsibilities of the parties. Although bodies corporate and politic and separately elected offices have the capacity to sue and be sued, state agencies may use a MOU when dealing with a body corporate and politic or separately elected office. For questions concerning whether a MOU or contract is an appropriate tool to memorialize an agreement, please contact [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov) or IDOA’s contract division.

MOUs are required to be signed by all State agencies appointing authorities or designees party to the document. The document will be input to PeopleSoft using the Executive Document Summary (“EDS”). The EDS (State Form 41221) should be attached to the MOU with the appropriate boxes completed including Box 40 and 41, then routed to SBA for review and approval. State agencies party to the MOU should designate a “lead agency” to route the document. Upon approval, the SBA will return the document to the lead State agency. It will be the lead State agency’s responsibility to forward a copy of the approved document to all State agencies party to the MOU.

On a quarterly basis, IDOA will compile a report from PeopleSoft using the EDS information, and will use it to monitor the MOUs to ensure that the agreement is between appropriate entities. If IDOA determines that a MOU is not appropriate, the respective agencies and Budget will be notified.

## **Is it a Contract or is it a Grant?**

The terms “contract” and “grant” are often used interchangeably, and this misuse results in operational inconsistencies, confusion, inefficiency and waste. The confusion stems from the fact that a contract and a grant contain the same essential elements: competent parties, lawful subject matter, sufficient consideration and consent of minds. However, contracts create “state procurement relationships” and grants create “state assistance relationships.” IDOA and OAG will reject documents from State agencies that attempt to avoid the competitive procurement process necessary for a contract by inappropriately framing a contract as a grant. Each agency is responsible for reviewing the funding source that supports the grant or contract to assure the proper agreement is utilized.

A procurement contract should be used whenever the agency wishes to buy, lease, or exchange property or services for the direct benefit of the State agency. This is the standard buyer-seller relationship. Also, when a State agency’s principal purpose is to acquire an intermediary’s services, which ultimately may or may not be delivered to an authorized recipient, then a contract is required. When the term “competitive procurement” (*i.e.* the use of Request for Proposals [RFPs]) is used, it refers to contracting for goods and services under a sealed bid or competitive negotiation procedure, and does not usually include grant proposals. For example, when an agency hires a private entity to perform a function or a duty which the state agency otherwise would perform itself, a procurement contract is necessary. Contracts contain clearly defined deliverables (*i.e.* what you are purchasing) that tie the duties of the contractor to payment.

Conversely, when the relationship established is for the transfer of money, property, services or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the State agency’s role is passive or no state agency involvement is anticipated during the performance of the activity, then a grant award is created. The purpose of a grant is to benefit some identified segment of the public, rather than the State agency. Furthermore, the authorization to expend public funds typically comes from the legislative body.

The State agency in essence acts as a patron of the grantee. As a grantor, the state agency’s purpose is only to assist an intermediary in providing goods or services to an authorized recipient. A grantee is normally free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. The State agency is typically responsible for setting strict criteria to ensure upfront that the grant recipient is qualified and competent; not infrequently, these criteria are set out in general terms in the enabling legislation.

Grants may require the Grantee to do the following: comply with various record-keeping requirements; abide by certain requirements regarding the purchase and ownership of equipment; submit budgets concerning cost allocation, cost sharing, the retention of consultants, travel expenses and the treatment of certain income earned as a result of the grant; obtain Grantor’s written approval before making significant changes; comply with various federal statutes; and make progress reports and final reports to the Grantor.

As such, a Grantor may evaluate the progress of a Grantee by review of technical or fiscal reports or by site visit, to determine that performance is consistent with objectives, terms, and conditions of the award, and a Grantor may require a Grantee to abide by general statutory, regulatory or administrative policy requirements. However, a grant should not contain clearly defined deliverables (*i.e.* there is no specific purchase like a contract) that tie the duties of the contractor to payment.

An example of the appropriate use of a contract and a grant: A state agency is mandated by statute to administer a program in which Federal funds are passed through to local entities for the provision of day care to disadvantaged mothers. If the State agency wishes to administer that program with its own staff,

the document used to pass through the funds to the actual day care providers would be a grant agreement. If the state agency wishes to agree with a company to assist in the administration of that program, an express duty of the state agency itself, a contract would be required.

The following form is a convenient checklist the federal government has developed for federal pass-through grants to sub-recipients. It should be consulted and used whenever necessary.



## **SUBRECIPIENT AND VENDOR DETERMINATION FORM( SCX-17)**

Entity\_\_\_\_\_

Financial Statement Date\_\_\_\_\_

Completed by\_\_\_\_\_

Date\_\_\_\_\_

Subrecipient/Vendor\_\_\_\_\_

Instruction: An auditee may be a recipient, a subrecipient, and/or a vendor. This form is designed to help determine whether an organization receiving federal awards from a pass-through agency should be considered a subrecipient or a vendor for single or program-specific audit purposes. It does not apply for-profit subrecipients.

It is not expected that all of the characteristics will be present and judgments should be used, along with the help of the pass-through entity and/or the cognizant agency, in determining whether an entity is a subrecipient or vendor. There may be unusual circumstances or expectations to the listed characteristics. In making the determination, the substance of the relationship is more important than the form of the agreement.

You should answer all questions for both of the organizations. Each question should be answered either "yes" (Y) or "no" (N). A "yes" answer is indicative of the type of relationship being reviewed. Space is provided for a concise comment if needed. After completing the questionnaire document your conclusion in Part 3.

Section references (Sec.) throughout the form are in the 1997 OMB Circular A-133, as amended June 27, 2003 unless otherwise noted.

**Part 1 – Subrecipient.** (The following questions relate to characteristics of an award that are indicative of a subrecipient relationship.)

	Y	N	COMMENTS
1. Does the entity receiving the funds from the pass-through entity determine who is eligible to receive the Assistance? [Sec. 210(b)(1)]	_____	_____	
2. Does the contract or agreement include performance requirements that are measured against whether the objectives of the federal program are met? [Sec. 210(b)(2)]	_____	_____	
3. Does the entity that receives the funds from the pass-through entity have programmatic decision-making responsibility? [Sec.210(b)(3)]	_____	_____	
4. Does the contract or agreement with the entity receiving the funds from the pass-through entity state that the entity is to comply with all applicable federal program compliance requirements? [Sec. 210(b)(4)]	_____	_____	
5. Are the federal funds being used to carry out a program of the entity receiving the funds from the pass-through entity as opposed to providing goods or services for a program of the pass-through entity? [Sec. 210(b)(5)]	_____	_____	

**Part 2 – Vendor.** (The following questions relate to characteristics of payments that are indicative of a vendor relationship.)

	Y	N	COMMENTS
1. Is the entity providing goods or services within its normal business operations? [Sec. 210(c)(1)]	_____	_____	
2. Does the entity provide similar goods or services to many different purchasers? [Sec. 210(c)(2)]	_____	_____	
3. Does the entity operate in competitive environment? [Sec. 210(c)(3)]	_____	_____	
4. Are the goods or services provided ancillary to the operation of the federal program? [Sec. 210(c)(4)]	_____	_____	
5. Is there no requirement in the contract or agreement with the entity receiving the funds (from the pass-through entity) that the entity is to comply with all applicable federal program compliance requirements? [Sec. 210(c)(5)]	_____	_____	

**Part 3 – Conclusion.** Based on a preponderance of “yes” answers and discussions with appropriate personnel, this entity has been determined to be a: (check one)

Subrecipient \_\_\_\_\_

Vendor \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Executive Document Summary (EDS)**

The Executive Document Summary was last revised effective July, 2006. The following information/instructions pertain to that form. The form is now available through PeopleSoft Financials. A link and other helpful information are available at <http://www.in.gov/idoa/2525.htm>.

All contracts submitted for signature approvals must be accompanied by a fully completed Executive Document Summary (EDS) form. It is an essential part of the approval process. It is used by the Indiana Office of Technology (when applicable), IDOA, Budget, OAG, and agency staff, to track necessary contract information and to assure appropriate policies are followed.

It is essential that the information on the EDS be accurate. This information is used in the development of reports such as the annual Professional Services Report and Minority and Women's Business Enterprises reports. Inaccurate information may reflect poorly on your agency, contribute to inaccurate reporting of contract information, and possibly lead to enhanced scrutiny on State Board of Accounts audits. Furthermore, inaccurate information could ultimately lead to the contract's rejection during the approval process.

The EDS is not part of the legally binding contract, so do not rely on Box 37 of the EDS sheet alone to describe the contractor's duties. Those duties need to be described fully within the contract itself. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties on the EDS sheet, but has failed to include them in the contract or amendment.

### **Instructions for the EDS Form**

Instructions for completing the EDS are located at <http://www.in.gov/idoa/2525.htm> . **REVIEW THE EDS ONLINE TRAINING BEFORE COMPLETING THE FORM.** The following is a more detailed description of the information that should be included on the EDS.

When creating your EDS sheet, click the EDS Entry link. Once there you'll need to navigate to Purchasing>Procurement>Contracts>EDS>EDS Employee Entry.

#### **EDS Entry**

Enter any information you have and click Search. Leave fields blank for a list of all values.

**Find an Existing Value** **Add a New Value**

EDS Number:

begins with ▾

Contract number:

= ▾

Sequence Number:

= ▾

Business Unit:

begins with ▾

☐ Case Sensitive

Search

Clear

Basic Search

Save Search Criteria

[Find an Existing Value](#) | [Add a New Value](#)

In the 'Find an Existing Value' tab type the EDS number you wish to use in the box provided. Each EDS number must begin with the agency Automated Purchasing System (APS) number followed by the last digit of the fiscal year and ending with an agency assigned contract number. *Example: D20-7-1389.* **THE EDS NUMBER FOR AMENDMENTS AND RENEWALS MUST BE THE SAME EDS NUMBER AS USED ON THE ORIGINAL CONTRACT.** If creating an amendment/renewal, find your EDS number, open the record and

click the AMEND or RENEW button. If this is an original contract and the search comes back with no matches, click the 'Add a New Value' tab.

## EDS Entry

[Find an Existing Value](#) [Add a New Value](#)

EDS Number:

[Find an Existing Value](#) | [Add a New Value](#)

Click the yellow 'Add' button to create a new EDS sheet. A new screen will appear that includes the information below. This information will complete Boxes #1 and 2 on the printed EDS page.

EDS Number	CONTRACT-TRAINING	Entered on	02/08/2007
Contract number	17588	Sequence Number	0

Action type   
Confidential ☐ ?

Please check the 'Confidential' box if the contract contains sensitive information not viewable by the public. This should only be used for certain Homeland Security contracts, contract documents containing information about minors or domestic violence victims, or other sensitive information.

**▼ Contracts & Leases (Box 3)**

<input type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contracts for procured service
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Other
<input type="checkbox"/> MOU	
<input type="checkbox"/> QPA	

?

Place a mark next to the type of document being submitted for approval. If the document does not fit one of the given descriptions mark 'Other' and specify the type of document in the resulting box. This will fill in Box #3 on the printed EDS.

**Agency Information (Box 14-16)**

**Business Unit** 00061 **Requisition ID**

**Location** 061COMM

IDOA/Commissioner Office

**Address Line 1** Indiana Dept of Administration

**Address Line 2** Commissioner Office

**Address Line 3** 402 W WASHINGTON ST RM W479

**City** INDIANAPOLIS **State** IN

Fill in the 'Business Unit' by clicking the search tool (the magnifying glass) and selecting the appropriate agency number. Fill in the 'Location' by clicking the search tool next to the box and selecting the correct address line. Line 1 is the most recently updated address. If you cannot find the correct address, submit an issue to GMIS by using the link on the PeopleSoft Financials login page. Note: Use the 'Requisition ID' box only if you are attaching a requisition to the contract. This section will fill in Boxes #14-16 on the printed EDS page.

EDS Employee Entry - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Print Mail News RSS Feeds

Address [https://financial.gmis.in.gov/psprj/EMPLOYEE/ERP/c/SOI\\_LOGGEDIN\\_DISP2.SOI\\_EDS\\_ROLE2\\_ENTR.GBL?PORTALPARAM\\_PTCNAV=SOI\\_EDS\\_ROLE2\\_ENTR\\_GB](https://financial.gmis.in.gov/psprj/EMPLOYEE/ERP/c/SOI_LOGGEDIN_DISP2.SOI_EDS_ROLE2_ENTR.GBL?PORTALPARAM_PTCNAV=SOI_EDS_ROLE2_ENTR_GB) Go Links

Home Worklist Add to Favorites Sign out

PA

**Agency Information (Box 14-16)**

**Business Unit**  **Requisition ID**

**Location**

**Address Line 1**

**Address Line 2**

**Address Line 3**

**City** **State**

**Fiscal Information (Box 4-10)**

**Fiscal Detail** [Customize](#) [Find](#) [View All](#) [First](#)

No Financial Impact	Year	Business Unit	Fund Code	Account	Program	Department Id	Project Id	Total Amount This Action	New Contract Total	Revenue Generated This Action	Revenue Generated Total Contract
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	0.000	0.000	0.000	0.000

Center and Object are required fields

**Totals:**

**Period Covered In This EDS (Box 11-13)**

**Start Date**  **End Date**

**Reference selection**

Done Local intranet

start Inbox - Microsoft Out... Executive Document ... EDS Employee Entry - ... 8:27 AM

In the 'Fiscal Information' section, enter the 'Year' in which there will be financial impact. If this contract spans more than one fiscal year, click the plus button located to the left of the information in this section. Complete the 'Business Unit' from which the money will be taken. Then, add the 'Fund Code,' 'Center,' and 'Object' using the search tools to the right of each box. Select the correct numbers from the list. 'Total Amount This Action' is the amount to be expended as a result of this

contract/amendment/renewal. 'New Contract Total' on original contracts will be the same amount shown in the 'Total Amount This Action' box. On amendments/renewals it will be the total of the original agreement plus the amount being added by the amendment/renewal. 'Revenue Generated This Action' and 'Revenue Generated Total Contract' are used ONLY when the contractor is paying the State. Enter the total dollar value to be collected under the agreement in 'Revenue Generated This Action.' 'Revenue Generated Total Contract' will be the total of the original amount plus (or minus) the amount of the amendment or renewal. If the contract document does not include financial consideration, please click the 'No Financial Impact' box. This will fill in Boxes #4-9 on the EDS form.

▼ Time Period Covered In This EDS (Box 11-13)	
Start Date	<input type="text"/> ?
End Date	<input type="text"/> ?
Method of source selection	<input type="text"/> ?

In the 'Time Period Covered In This EDS' box, enter the 'Start Date' and the 'End Date' of the contract. If you do not know the start or end date, estimate to the best of your ability. These fields are required. The 'Method of source selection' needs to be selected from the drop down box. If an RFP was used, indicate the RFP number in the box that pops up. **If a "Special Procurement" was used, include a copy of the authorization letter.** (See IC 5-22-10 for further information.) This will complete Boxes #11-13 on the printed EDS form.

▼ Agency Contact Information (Box 17-19)	
Name	<input type="text"/> ?
Telephone	<input type="text"/>
Email ID	<input type="text"/>

In the 'Agency Contact Information' section you will need to enter the Name, Telephone, and Email ID of the person in your agency most familiar with the contract in case an approving agency needs to contact someone with questions. This will complete Boxes #17-19 on the printed EDS form.

▼ Courier Information (Box 20-22)	
Name	<input type="text"/> ?
Telephone	<input type="text"/>
Email ID	<input type="text"/>

The 'Courier Information' is the Name, Telephone, and Email ID the approving agency will use to contact someone to pick up the contract after it has been approved (or rejected). This will complete Boxes #20-22 on the printed EDS form.

**▼ Vendor Information (Box 23-28)**

Vendor ID  ?      Addr Seq Num

Address Line 1  
Address Line 2  
Address Line 3  
City  
State      Zip

Contract Supervisor

Vendor Email

Vendor Telephone

Industry Type  ?

Certified Types

Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered)      ☐ Yes      ☐ No ?

The Vendor ID can be obtained by clicking on the search tool and searching for the Vendor by Company Name. Choose the Address Sequence Number by clicking on the search tool next to the box and selecting the correct address line. Line #1 is the most recently updated address. If you cannot find the Vendor or the correct address, please refer to the link [Adding a Vendor](http://www.in.gov/idoa/2525.htm) located at <http://www.in.gov/idoa/2525.htm>.

It is imperative that the Vendor's name in the contract be the same on the EDS and as listed with the Secretary of State. The name of the DBA may be used if that DBA is also listed on the Vendor's Secretary of State's registration. If the Contractor/Grantee is not an individual, be sure to include the business entity designation that appears in the Secretary of State's listing ("Inc.", "Corp.", "LLC", "LP", etc.) on both in the first paragraph of the contract or grant, on the signature page, and on the EDS sheet. The agency should also submit a hard copy showing that the vendor is registered and is current with its registration with the Secretary of State.

Indicate the Vendor's 'Contract Supervisor,' 'Email' and 'Telephone' in the boxes provided. These boxes are required. From the drop down box please select the 'Industry Type' for your Vendor. Next, select 'Yes' or 'No' to indicate whether the Vendor is registered with the Secretary of State. (Note: If the Contractor/Grantee is other than an individual or a partnership, it must be registered with the Secretary of State's Office to do business with or in the State of Indiana. Confirm the registration, if necessary, by checking Secretary of State's website at [https://secure.in.gov/sos/bus\\_service/online\\_corps/name\\_search.aspx](https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx).) This will complete Boxes #23-28 on the printed EDS form.

**▼ M/WBE Sub-Vendors (Box 29-32)**

M/WBE Distribution Detail							Customize   Find   View All	First  1 of 1  Last
Help	Type	Business Registration Number	Vendor Name	Industry Type	Percent	Anticipated Date of Utilization		
1 ?		<input type="text"/>			<input type="text"/>	<input type="text"/>		

Select the type of M/WBE Sub-Vendor from the drop down box. Your choices are Women, Minority, or None. Next, complete the Business Registration Number by clicking on the search tool and finding your Vendor by searching business names. Once you have selected the correct number, the Vendor name will automatically generate. Select the Industry Type and fill out the percentage of the minority or women's business participation. Finally, complete the Anticipated Date of Utilization. If you do not have an exact date, estimate to the best of your ability. In cases in which the contract does not have an M/WBE Subvendor, please select "NONE." This section is mandatory. If your **prime** vendor is an M/WBE, do not record that information here; only record their subvendors/subcontractors. The system will automatically capture prime contracting M/WBE information. The M/WBE Office can be reached at (317) 232-3061 and can assist you with specific questions regarding this section. This will complete Boxes 29 through 32 on the printed EDS form. In the case of Amendments or Renewals it is necessary to properly indicate if the contract is a MBE or WBE.

**Additional Information (Box 33-36)**

Is there Renewal Language in the document? ☐ Yes ☐ No

Is there a Termination for Convenience clause in the document? ☐ Yes ☐ No

Will the attached document involve information technology or telecommunications systems(s)? ? ☐ Yes: IOT or Delegate has signed off on contract

Statutory Authority  ?

If there is Renewal and/or Termination Language, please select the appropriate box for each question. IC 4-23-16-8 requires IOT approval on agreements for computer equipment/software over a certain dollar value. Check the Yes box if IOT has approved the contract. Give the statutory cite that authorizes your agency to enter into this contract or grant in the box provided. This will complete #Boxes 33-36 on the printed EDS form.

**Additional Comments (Box 37-39)**

Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) ?

Justification of vendor selection and determination of price reasonableness: ?

If this contract is submitted late, please explain why: (Required if more than 30 days late.) ?

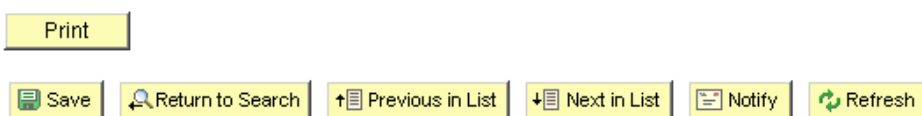
In the 'Additional Comments' area, describe the work to be accomplished by the Contractor/Grantee. Also, include a brief reason why it is in the best interest of the State to expend the funds.



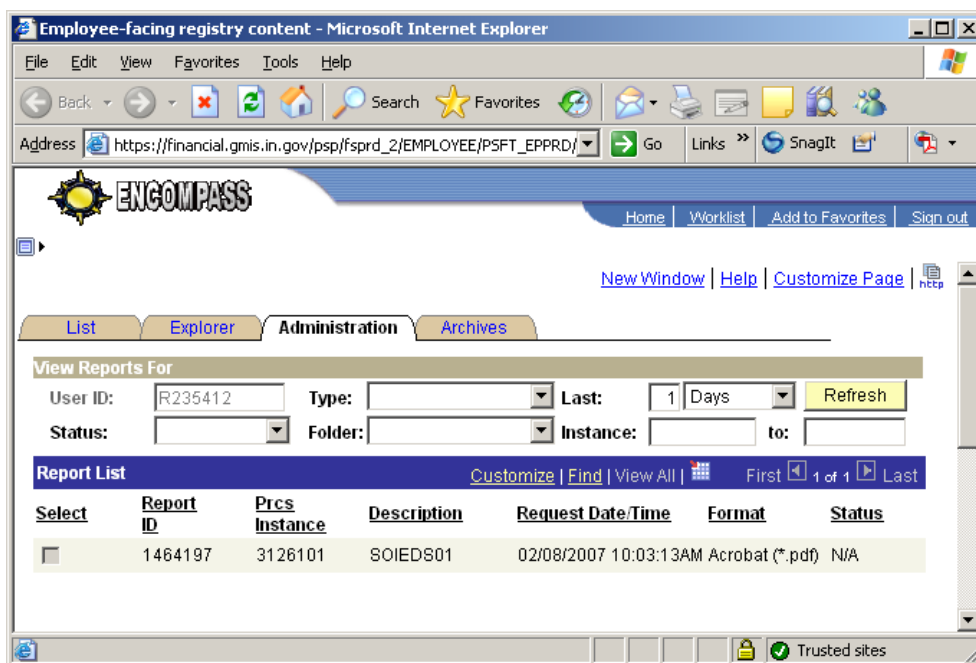
**Do NOT use the explanation provided in this Box as a substitute for a description of the services to be provided in the contract document. This is a frequent problem in amendments. (Note: Only the first 700 characters will be printed. Put your most important information first.)**

Then, describe how/why the Contractor/Grantee was chosen. If an RFP was used, merely make reference to Box #13. It is IDOA's expectation that all agreements of \$75,000 and above will be solicited through a formal process. If no formal process was used to select the recipient then you MUST explain how they were chosen and how you determined their price to be reasonable in Box #38. **(Note: Only the first 700 characters will be printed. Put your most important information first.)** Also, be sure to submit the written justification for the special procurement (that was approved by IDOA) with the EDS.

If the document is being placed into the signature cycle 30 days after the date indicated in Box #11, you must explain why.



When you are finished entering your information, click the 'Save' button at the bottom of the screen. Then click 'Print.' This will generate a pop up screen that looks like the picture that follows:



To generate a report that enables you to print the EDS sheet, click the Yellow 'Refresh' button (you may need to do this more than once). The 'Status' column will gradually change until it looks like the picture below.

Report List							
				Customize   Find   View All   	First  1 of 1  Last		
Select	Report ID	Prcs Instance	Description	Request Date/Time	Format	Status	Details
<input type="checkbox"/>	1465398	3128626	<a href="#">SOIEDS01</a>	02/08/2007 1:53:06PM	Acrobat (*.pdf)	Posted	<a href="#">Details</a>

When the 'Status' column says 'Posted', click on the blue link in the 'Description' column. This will generate a PDF of your EDS sheet. An example follows:

## EDS Sheet



### EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number: EDS-EXAMPLE		2. Date prepared: 2/28/2007	
<b>3. CONTRACTS &amp; LEASES</b>			
<input type="checkbox"/> Professional/Personal Services <input type="checkbox"/> Grant <input type="checkbox"/> Lease <input type="checkbox"/> Attorney <input type="checkbox"/> MOU <input type="checkbox"/> QPA		<input type="checkbox"/> Contract for procured Services <input type="checkbox"/> Maintenance <input type="checkbox"/> License Agreement <input type="checkbox"/> Amendment# _____ <input type="checkbox"/> Renewal # _____ <input checked="" type="checkbox"/> Other IBM BOA	
<b>FISCAL INFORMATION</b>			
4. Account Number: 5220-10650.537000		5. Account Name: Information Services	
6. Total amount this action: \$102,312.00		7. New contract total: \$102,312.00	
8. Revenue generated this action: \$0.00		9. Revenue generated total contract: \$0.00	
10. New total amount for each fiscal year:			
Year 2007 \$102,312.00			
Year _____ \$ _____			
Year _____ \$ _____			
Year _____ \$ _____			
<b>TIME PERIOD COVERED IN THIS EDS</b>			
11. From (month, day, year): 7/1/2006		12. To (month, day, year): 6/30/2007	
13. Method of source selection:			
<input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input type="checkbox"/> Negotiated <input type="checkbox"/> RFP# _____ <input checked="" type="checkbox"/> Other (specify) BOA <input type="checkbox"/> Special Procurement			
35. Will the attached document involve data processing or telecommunications systems <input checked="" type="checkbox"/> Yes: IOT or Delegate has signed off on contract			
36. Statutory Authority (Cite applicable Indiana or Federal Codes): INDIANA CODE 5-22-6-1ET SEQ			
37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) To add the following products to the IBM Ordering Agreement: PSF for z/OS, S/390 Resolve, Virtual Consulting Services for the ISDH, IMS v9 Mainframe Software Upgrade and CICS v2 Mainframe Software Upgrade. The Virtual Consulting Services part will be billed back to ISDH.			
38. Justification of vendor selection and determination of price reasonableness: This mainframe software is proprietary to the Licensor, IBM Corporation and can only be distributed by the Licensor. The software listed in the attached Supplements is already installed on the mainframe.			
39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)			
40. Agency fiscal officer or representative approval		41. Date Approved	
44. Attorney General's Office approval		45. Date Approved	
42. Budget agency approval		43. Date Approved	
46. Agency representative receiving from AG		47. Date Approved	



18086-000

## **Getting Started: Things to Consider Before Developing Your Contract**

If your contract will be used to obtain Professional Services, or to fund grants, it will typically be reviewed by the IDOA Contract Management Section.

Contracts involving a formalized competitive process (Bids, responses to Requests for Proposals or Requests for Information) are also used to secure personal services, and are covered by separate manuals and instructions prepared by IDOA's Procurement Division. The Procurement Division conducts separate training sessions on these types of contracts. Leases are also covered in separate training sessions.

**Professional Services:** Any type of service that may be legally performed only by an accounting professional, an architectural or engineering professional, an attorney, a health care professional, a veterinarian, or a real estate professional; a person licensed, certified or registered by a board, an expert witness, investigator, or a person empowered to conduct religious services, any type of firm, company, or corporation that will supply services using the expertise of any of the above mentioned professionals. The Contractor is an individual who performs services of a specialized nature as an Independent Contractor.

IC 5-22-6-1 provides that "the purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate." IDOA construes "any procedure the . . . agency considers appropriate" to mean one of those described in IC 5-22: a bid, a proposal, or a special procurement under IC 5-22-10.

Those involved with State contracting should become familiar with the special procurement statute. If you are not obtaining a service under a bid or an RFP, then it must fit one of the categories permitted by IC 5-22-10. Even then, the agency is expected to obtain quotes and maintain documentation of the efforts made to maximize competition. IC 5-22-10 describes the circumstances under which a Special Procurement is permitted:

**IC 5-22-10-1. Purchase without soliciting bids or proposals.** Notwithstanding any other provision of this article, a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.

**IC 5-22-10-2. Competition.** A special purchase must be made with competition as is practicable under the circumstances.

**IC 5-22-10-3. Contract files; record listing all contracts.**

- (a) A purchasing agent shall maintain the contract records for a special purchase in a separate file.
- (b) A purchasing agent shall include in the contract file a written determination of the basis for:
  - (1) the special purchase; and
  - (2) the selection of a particular contractor.
- (c) Notwithstanding any other law, a governmental body shall maintain a record listing all contracts made under this chapter for a minimum of five (5) years. The record must contain the following information:
  - (1) Each contractor's name;
  - (2) The amount and type of each contract;
  - (3) A description of the supplies purchased under each contract.
- (d) The contract records for a special purchase are subject to annual audit by the state board of accounts.

**IC 5-22-10-4. Emergency conditions.**

- (a) A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.
- (b) The counterterrorism and security council established by IC 10-19-8-1 may make a purchase under this section to preserve security or act in an emergency as determined by the governor.

**IC 5-22-10-5. Savings to governmental body.** A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body.

**IC 5-22-10-6. Auctions.** A purchasing agent may make a special purchase at an auction.

**IC 5-22-10-7. Data processing contract or license agreements.** A purchasing agent may make a special purchase of data processing contracts or license agreements for: (1) software programs; or (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements.

**IC 5-22-10-8. Compatibility of equipment, accessories, or replacement parts.** A purchasing agent may make a special purchase when: (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements.

**IC 5-22-10-9. Purchasing method impairs functioning of agency.** A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency.

**IC 5-22-10-10. No offer received under other purchasing method.** A purchasing agent may make a special purchase when the purchasing agency has solicited for a purchase under another purchasing method described in this article and has not received a responsive offer.

**IC 5-22-10-11. Evaluation of supplies or system containing supplies.** A purchasing agent may make a special purchase for the evaluation of supplies or a system containing supplies for any of the following reasons: (1) To obtain: (A) functional information; or (B) comparative data; (2) For a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body.

**IC 5-22-10-12. Governmental discount available.** A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price.

**IC 5-22-10-13. Single source for supply; award of contract.** Subject to sections 14 and 15, a purchasing agent may award a contract for a supply when there is only one (1) source for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply.

**IC 5-22-10-14. General Services Administration price.** A purchasing agent may make a purchase from a person when the purchasing agent determines in writing that: (1) supplies can be purchased from the person or the person's authorized representative at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration; and (2) it is advantageous to the governmental body's interest in efficiency and economy.

**IC 5-22-10-15. Purchase from person who has contract with federal agency.**

- (a) A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions.
- (b) A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions, as provided in IC 4-13-1.6 or IC 5-22-17-9.

**IC 5-22-10-16. Acquisition of supplies through transfer from federal government.**

- (a) A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals.
- (b) A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase, or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds appropriated to pay the consideration required for one (1) year of the agreement.
- (c) A purchasing agent who purchases or leases surplus federal materials shall, at the time of the purchase or lease, or immediately thereafter, give public notice in accordance with IC 5-3-1.

**IC 5-22-10-17. Acquisition of supplies through acceptance of gift.** A purchasing agent may acquire supplies by accepting a gift for the purchasing agent's governmental body.

**IC 5-22-10-18. Special purchase of copyrighted material.** A purchasing agent for a state purchasing agency may make a special purchase of copyrighted materials to be used, provided, or distributed by a state agency.

**IC 5-22-10-19. Purchase from public utility following independent appraisal.** A purchasing agent may make a special purchase from a public utility if the purchase or lease price is a negotiated price that considers the results of an independent appraisal that the purchasing agency obtains and an independent appraisal that the public utility obtains.

**IC 5-22-10-20. Purchase of petroleum products by aviation commissioners or airport authority.**

- (a) This section applies to the purchase of petroleum products by: (1) a board of aviation commissioners under IC 8-22-2; or (2) an airport authority under IC 8-22-3.
- (b) A purchasing agent may make a special purchase of petroleum products if the petroleum products are for resale to the general public.

If an RFP is not used, IDOA will review the justification provided on the EDS in Box 38 describing how the contract was competitively procured (Box 38). If a justification is not supplied at this dollar amount, your contract may be rejected. If a contract is negotiated without competition, you must provide answers to the questions below. If the answers are not provided, the contract will most likely be rejected.

- ⇒ Why was this Contractor chosen?
- ⇒ Did the agency contact other potential Contractors?
- ⇒ How did the agency arrive at the price?
- ⇒ Why is the price fair and reasonable under the circumstances?
- ⇒ Was there an initial government estimate?
- ⇒ Did formal negotiation proceedings take place?
- ⇒ Did the agency document its discussions with the Contractor?

At times it will be necessary to use an out-of-state contractor, but great efforts should be made to keep this to a minimum. If it is necessary to use an out-of-state contractor, a justification should accompany the contract.

## **Contract Development**

The following pages include Boilerplate clauses for **Professional/Personal Service Contracts**. The use of a good agency or division Boilerplate that meets your contracting needs is a great management tool and time-saver. Such an agency or division boilerplate should be based on these standard boilerplate clauses. Required clauses must be included. All other standard clauses should be included where, but only where, appropriate.

### **Reminders**

*The following reminders are offered to help avoid having contracts returned unsigned during the review process. This is not an exhaustive listing but rather a listing of those items that occur frequently.*

The contractor's duties need to be described fully within the contract itself. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties on the EDS sheet, but has failed to include them in the contract or amendment.

To assist in the timely review of your contract it is important that you receive IDOA approval in advance and in writing for approval of special procurements, particularly if you are relying on a sole source under IC 5-22-10-13.

If the Contractor/Grantee is not an individual, be sure to include the business entity designation that appears in the Secretary of State's listing ("Inc.", "Corp.", "LLC", "LP", etc.) both in the first paragraph of the contract, on the signature page, and on the EDS sheet.

Indiana firms/universities/individuals must be sought to fill the contractual needs of state agencies. If you contract with someone other than an Indiana entity, you will need to explain how you determined that there was no Indiana entity that could fill your needs. Always attach a completed Indiana Economic Impact Statement.

If you are deleting a boilerplate clause, leave the paragraph numbering the same, delete the text, and state "not applicable" or "deleted by agreement of the parties" (ex. **18. Employment Option – DELETED BY MUTUAL AGREEMENT OF THE PARTIES**).

Non-Collusion is the final clause before the signature page for all agreements including renewals/amendments. The signature page of an agreement should be placed after the contract language and before attachments/exhibits. The signature page must be flagged for easy identification by the approving agencies.

Attachments/exhibits attached to a contract **must** be incorporated by reference in the body of the contract and must be labeled. Make sure information in exhibits, attachments, appendices, etc. is consistent with the contract. No extraneous items should be attached to a contract.

If you are citing an Executive Order, or a somewhat more obscure legal authority that is not Indiana Code or Administrative Code, please consider attaching it to your contract. This will help ensure the speed and efficiency needed for approval.

Mutual Termination for Convenience Clauses are generally unacceptable and will likely result in a rejection of your contract or grant.



The use of Executive Letters to change a contract is unacceptable. All changes to a contract must be by mutual agreement and by amendment and signed by all parties, including IDOA, Budget and OAG.

When changes/corrections are made in an agreement after signatures have been affixed, the changes must be initialed and dated by both the Contractor and the agency.

Include all optional clauses that you believe will best protect your agency. Do not include clauses which are not appropriate/useful (i.e. using a Key Person clause if there is no key person to the agreement, using order of precedence when there are no other documents to the agreement, etc.).

If using clauses that require the insertion of information to make them complete (RFP #\_\_\_\_, payment shall be sent to \_\_\_\_\_) insert the needed information or remove the clause.

In contracts with an individual, an issue arises as to whether that individual is a true independent contractor or an employee. So, it is a good idea to include a written analysis of the service in relation to the IRS guidelines. This should be placed behind the EDS. It will help move the contract along.

Make sure all dates are consistent in a document. Fiscal year does not automatically set contract dates.

The federal government frequently requires certain boilerplate in contracts where the receipt of federal funds is involved. The required boilerplate varies with the source of the funds. This Manual does not attempt to address this type of boilerplate. If your contract will involve federal funds, check with your agency legal section or program management to make sure all necessary clauses are included.

**Remove instructional language** when using boilerplate clauses.

Number each page of the contract, preferably “X of Y”.

Use the correct form (i.e. contract, grant, MOU).

All signatures must be in original ink, no signature stamps or copies are accepted.

Make sure dates and amounts are consistent. The term of the contract should be consistent with the dates listed, and the amounts listed need to add up correctly.

## **PROFESSIONAL SERVICES CONTRACT**

This Contract ("this Contract"), entered into by and between \_\_\_\_\_ (the "State") and \_\_\_\_\_ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

### **1. Duties of Contractor**

The duties of the Contractor should outline the exact, detailed services to be performed. Detailing those services ensures that your agency and the Contractor understand exactly what should be provided and lessens the chances that misunderstandings will arise. If the duties of the Contractor have already been set out in a Statement of Work or other separate document, you may fulfill the requirements of this clause by making a short descriptive statement about the duties to be performed then reference that separate document as an exhibit. **ALL ATTACHMENTS / EXHIBITS MUST BE SPECIFICALLY INCORPORATED BY REFERENCE AND PROPERLY LABELED.**

The Contractor shall provide the following services relative to this Contract:

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### **2. Consideration**

Consideration should be stated as a definite amount at a certain rate with a ceiling limitation (per hour, per deliverable, per day, etc.). IDOA requires a not-to-exceed figure on total payments when a rate system is used. As in Clause 1 above, attaching an exhibit may be advisable where the system of consideration involves a number of deliverables and is sufficiently complex to make it advisable to do so. You should still state the not-to-exceed amount in this clause. **THIS SHOULD BE THE SECOND CLAUSE OF THE CONTRACT.**

The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \_\_\_\_\_.

### **3. Term**

Term should clearly state the duration of the Contract either by giving a specific beginning and ending date, (month, day and year) OR a duration that begins after the date of the last State signatory. There is no statutory term limit on service contracts. However, as a matter of policy, we retain a 4-year limit, but are willing to discuss longer terms on a case by case basis. **THIS SHOULD BE THE THIRD CLAUSE OF THE CONTRACT.**

This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

**THE FOLLOWING PARAGRAPHS 4 THROUGH 47 ARE DEFINED BY IDOA AS STATE BOILERPLATE CLAUSES. STATE BOILERPLATE CLAUSES SHALL REMAIN UNALTERED AND IN THEIR STANDARD FORM, UNLESS ANY CHANGES OR ALTERATIONS ARE DOCUMENTED AS REQUIRED UNDER PARAGRAPH 46, "BOILERPLATE AFFIRMATION CLAUSE".**

#### **4. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

#### **5. Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

#### **6. Audits**

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.*, and audit guidelines specified by the State.

The following clause should be used as an alternative if Federal funds are passed through to a subrecipient.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

## **7. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

## **8. Changes in Work**

This provision can be customized to meet your agency's contracting needs.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

## **9. Compliance with Laws**

- A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes.

- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.
- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
  - (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
      - (ii) IC 24-5-12 [Telephone Solicitations]; or
      - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
    - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

## **10. Condition of Payment**

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

## **11. Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

## **12. Continuity of Services**

This clause is vital in certain types of contracts, particularly those involving the administration of essential programs. But often, inclusion of this clause is unnecessary and confusing to the contractor. Do not hesitate to delete it when its inclusion is inappropriate.

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
  - 1. Furnish phase-in training; and
  - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
  - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
  - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

## **13. Debarment and Suspension**

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary

management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

#### **14. Default by State**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

#### **15. Disputes**

This is a very important clause. You should include it in every contract. This gives you and the Contractor an avenue to settle grievances, rather than to terminate the contract. No authority can replace that of the Commissioner of the Indiana Department of Administration. It is sometimes helpful to reinforce to the Contractor that this procedure is merely to assist the State in determining true conflicts from mere misunderstandings, and that the decision of the Commissioner is non-binding.

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.
- C. If a party to the Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
  - 1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided

within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

## **16. Drug-Free Workplace Certification**

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the



Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## **17. Employment Eligibility Verification**

This clause is required by IC 22-5-1.7-11, 12, 13 for all contracts for services.
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The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

## **18. Employment Option**

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

## 19. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

## 20. Funding Cancellation

This clause is required by IC 5-22-17-5 and FMC 2007-1.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## 21. Governing Laws

This clause is MANDATORY in all contracts and is covered by IC 34-13-2-3(d). Many Contractors want to alter the clause to include the laws of the state in which their parent company resides. This is never acceptable.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in the State of Indiana.

## 22. Indemnification

Also called a Hold-Harmless Clause. **NEVER** include a clause that provides that the State will hold harmless or indemnify the other party.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

## 23. Independent Contractor

This is a very important clause. Refer to the earlier section in the manual that addresses abuses of this option per IRS rulings.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **24. Information Technology Enterprise Architecture Requirements**

Unless there is a waiver approved by the Indiana Office of Technology (IOT), this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by IOT.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

## **25. Insurance**

This clause is not mandatory. However, you may make a business decision that requires insurance provisions. If so, you should use the language provided here.

- A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:
1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
  2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
  3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Contractor's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
  2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **26. Key Person(s)**

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section.

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_

## **27. Licensing Standards**

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

## 28. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

## 29. Minority and Women's Business Enterprises Compliance

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA. The Contractor's Subcontractor Commitment will become the MWBE Participation Plan upon execution of this Contract. The Subcontractor Participation Plan will be kept on file at the MWBE offices.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract. If changes to the MWBE participation plan are approved by the MWBE Division, the current participation plan on file will supersede the subcontractors listed below.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>PERCENT</u>
<hr/>					
<hr/>					

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MWBE subcontractor where the State considered the selection of the MWBE by the Contractor when issuing the procurement award. A copy of each subcontractor agreement must be submitted to the MWBE Division in IDOA within thirty (30) days of the execution of the contract between the Contractor and the State. Failure to provide a copy of the subcontractor agreements may be considered a violation of this provision and of 25 IAC 5. The Contractor must obtain approval from the MWBE Division before changing the MWBE Participation Plan submitted in connection with this Contract.

In the event of a violation of this provision or of 25 IAC 5, the department shall notify the contractor of the violations and will seek a course of action to correct them. The selected course of action may include the recommendation for the imposition of sanctions for material breach of contract pursuant to 25 IAC 5-7-8. In the event that it is determined that a violation of this rule has occurred, the department may elect to immediately employ one (1) or more of the sanctions found in 25 IAC 5-7-8(b).

If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements.

## 30. Nondiscrimination

You MUST include this clause. Please see the following section for contracts using federal funding.

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an

employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**If federal funding is involved with the contract, you must include the following stipulated language.**

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

### **31. Notice to Parties**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

Agency contact name and/or title

Agency name

Agency mailing address

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

Vendor contact name and/or title

Vendor name

Vendor mailing address

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

### **32. Order of Precedence; Incorporation by Reference**

We strongly encourage the use of this clause. This clause can be extremely important when a problem arises. Word the clause accordingly, but State-created documents should ALWAYS take precedence over Contractor documents or other material. You can refer to an RFP, a Grant Application, replies to an RFP or Grant Application Request prepared by a Vendor/Grantee, etc. If you include this clause in your contract, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following

order: (1) This Contract, (2) attachments prepared by the State, (3) RFP#\_\_\_\_\_, (4) Contractor's response to RFP#\_\_\_\_\_, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

### **33. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

### **34. Payments**

This provision may be modified to stipulate the type of payment- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted (for example, in triplicate, etc.).

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

Use this paragraph if payment in advance is made for maintenance of equipment or software.

- B. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

### **35. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

### 36. Progress Reports

This provision may be modified to include specific dates or periods that reports are due. Please modify the language in such a way as to be appropriate for your agency.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

### 37. Renewal Option

If there is the potential that your agency will want to renew the Contract, this clause is **REQUIRED**. As a matter of policy we retain a four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. If a contract is going to allow for a price increase, the method of determining the increase must be defined in the original contract. **If you do not provide for a price increase in the original contract, you cannot increase the price upon renewal but must do a formal amendment instead.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

Use this language if you **are** allowing for a price increase.

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal to this Contract may include an increase of up to \_\_\_\_\_ percent at the sole discretion of the State.



### **38. Security and Privacy of Health Information**

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

### **39. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

### **40. Substantial Performance**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

#### **41. Taxes**

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

#### **42. Termination for Convenience**

**While not mandatory, inclusion of this clause is highly recommended.**

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

#### **43. Termination for Default**

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
  - 1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
  - 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
  - 3. Make progress so as to endanger performance of this Contract; or
  - 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

#### **44. Travel**

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

#### **45. Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

#### **46. Work Standards**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

#### **47. State Boilerplate Affirmation Clause**

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2011 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.
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**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

## Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

### Contractor:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### Witness:

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Agency Name:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

### Indiana Office of Technology

By: \_\_\_\_\_  
Brian S. Arrowood, Chief Information Officer  
  
Date: \_\_\_\_\_

### Department of Administration

\_\_\_\_\_ (for)  
Robert D. Wynkoop, Commissioner  
  
Date: \_\_\_\_\_

### State Budget Agency

\_\_\_\_\_ (for)  
Adam Horst, Director  
Director  
Date: \_\_\_\_\_

### APPROVED as to Form and Legality: Office of the Attorney General

\_\_\_\_\_ (for)  
Gregory F. Zoeller, Attorney General  
  
Date: \_\_\_\_\_

## Contract Checklist

Before you send your contract through the signature approval process, check your contract against the following list. If all items are completed, your contract should not encounter any problems during the approval process.

	Terms are spelled out, consistent, do not conflict with federal or state law, etc.
	All contract documents are paginated and in order.
	All references in contract correspond with appropriate clauses and attachments.
	<b>Attachments</b> <ul style="list-style-type: none"> <li>→ must be incorporated by reference</li> <li>→ if referenced, must be attached FOLLOWING the signature page</li> <li>→ if referenced, must reference proper attachment number</li> <li>→ if attached, must be referenced</li> <li>→ all attachments should be labeled in accordance with the references made in the contract</li> <li>→ if dated, must be dated <i>prior</i> to contract signature dates</li> </ul>
	<b>Confidentiality</b> - if contractor has referenced any additional confidentiality requirements, they must be subject to IC 5-14-3
	<b>Consideration</b> <ul style="list-style-type: none"> <li>→ clear, detailed description of consideration</li> <li>→ if itemized, items must equal total</li> </ul>
	<b>Copies</b> <ul style="list-style-type: none"> <li>→ if more than one copy of the contract, must have original signature (no faxes or photocopies)</li> <li>→ if more than one copy of the contract, must have attachments for each copy, if applicable</li> </ul>
	<b>Duties</b> - clear, detailed description of duties
	<b>Handwritten changes</b> - must be initialed by both parties, and must be initialed by parties with the authority to sign contracts
	<b>Math</b> - does basic math in the contract add up (Ex. per square foot costs, itemized totals)
	<b>SSNs</b> - should be <u>no</u> visible personal social security numbers in contract, attachments, or EDS sheets
	<b>Term</b> <ul style="list-style-type: none"> <li>→ if it lists a number of months and two dates, the number of months must equal the time between the two dates (Ex. 12 months, Jan 1 to Dec 31)</li> <li>→ must be termination date</li> </ul>
	Drug-free workplace Certification REQUIRED
	Duties of Contractor, Rate of Pay and Terms of Contract REQUIRED
	Employment Eligibility Verification REQUIRED
	Funding Cancellation REQUIRED
	Non-Collusion Statement REQUIRED
	Non-Discrimination Clause REQUIRED
	Boilerplate Affirmation Clause REQUIRED
	Governing Laws REQUIRED
	Indemnity (Hold-Harmless Clause) —THE STATE CAN NEVER INDEMNIFY THE CONTRACTOR
	Travel (REQUIRED if travel costs included in contract)
	<b>Signature Page</b> <ul style="list-style-type: none"> <li>→ Contractor and AGENCY Signature (originals; NO faxes or photocopies!)</li> <li>→ Remember to get IOT Signature if necessary.</li> <li>→ Robert D. Wynkoop, Commissioner, Indiana Department of Administration</li> <li>→ Adam Horst, Director, State Budget Agency</li> <li>→ Gregory F. Zoeller, Attorney General of Indiana</li> </ul>

## **Grant Development**

A Grant is an award of money by the State to a person or entity (the “Grantee”) so that the Grantee can pursue or fulfill a goal or objective of the Grantee. The State can (and does) place restrictions on how the funds can be used, and require reports, conformance to schedules, etc. A contract should not be characterized as a grant unless there has been some application process where the State selected a Grantee based on certain usage requirements. When the State is the recipient of a grant from another source and will in turn use those funds to obtain services for the State from an outside entity, this is not marked a grant. It is a contract for services and solicitation guidelines would apply.

### **Reminders**

The following pages include Grant Boilerplate language. Only GRANT-SPECIFIC information is included here. Clauses that are mandatory for grants are included in this section. If there were clauses in the Professional/Personal Service Contract Boilerplate that would further protect your agency, feel free to include them. In any clause “borrowed” from the contract Boilerplate, please be sure to alter language to read “Grantee” rather than “Contractor.”

Remove the instruction language from the clauses before inserting them in your contract.

Certain clauses have been designated as required and must be included in every Grant. This includes an order of precedence clause if you incorporate a grant application into the agreement or if a grant application is used to clarify the expectations of the Grantee.

Please include a completed Executive Document Summary as the face sheet of your Grant.

Please number each page of the contract, preferably “X of Y”.

If your agency prepares federal grants, be sure to include clauses required by your federal granting authority.

## **GRANT**

This Grant Agreement, entered into by and between \_\_\_\_\_ (the “State”) and \_\_\_\_\_ (the “Grantee”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

### **1. Purpose of this Grant Agreement**

This clause is specifically for Grants. A grant differs from a contract in that a grant's funds are specifically appropriated for narrowly-defined purposes, and usually may only be awarded to defined 'qualified entities', are subject to ongoing administration by a specific state agency, and subject to repayment to the state if the terms of the Grant are not met by the Grantee. Remember that your Exhibit reference may be different than the one included here. **THIS SHOULD BE THE FIRST CLAUSE OF THE GRANT.**

The purpose of this Grant Agreement is to enable the State to award a grant of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$XXX,XXX.XX) to the Grantee for eligible costs of the project (the “Project”) or services as described in Exhibits A and B of this Grant Agreement. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in Indiana Code X-X-X establishing the authority to make this Grant, as well as any rules adopted thereunder.

### **2. Term**

Term should clearly state the duration of the agreement either by giving a specific beginning and ending date, (month, day and year) or a duration that begins after the date of the last State signatory. As a matter of policy we will retain the 4-year limit, but are willing to discuss longer terms on a case-by-case basis. **THIS SHOULD BE THE SECOND CLAUSE OF THE GRANT.**

This Grant Agreement shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

### **3. Design and Implementation of Project**

Should this Grant provide for the development of a special project, rather than routine services to the community, this clause should be included. This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The Grantee shall be solely responsible for the proper design and implementation of the Project as described in Exhibit A, attached hereto and incorporated fully herein. The Grantee agrees to complete the Project in accordance with the plans and specifications contained in its application which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

#### **4. Monitoring Reviews by the State**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The State may conduct an on-site monitoring review of the Project. Such monitoring review will document the following:

- A. Whether Project activities are consistent with those set forth in Exhibit A, the grant applications, and the terms and conditions of the Grant Agreement.
- B. A complete, detailed analysis of actual state, local and/or private funds expended to date on the Project and conformity with the amounts for each budget line item as set forth in Exhibit B, attached hereto and incorporated herein.
- C. A detailed listing of all Project costs by project budget line item which are accrued yet unpaid, if any.

A written evaluation as to the Grantee's timely progress in project management, financial management and control systems, procurement systems and methods, and performance relative to timely submission of project reports.

#### **5. Payment of Grant Funds by the State**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The payment of this Grant by the State to the Grantee shall be made in accordance with the following schedule and conditions:

- A. This Grant Agreement must be fully executed.
- B. All the evidentiary materials required by Exhibit \_\_\_\_, attached hereto and incorporated herein, must be submitted to and approved by the State.
- C. Any other grant conditions must be met to the State's satisfaction.
- D. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.
- E. Unless authorized by statute and previously agreed, all payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.
- F. If advance payment of a portion of the grant funds is permitted by statute, and the State agrees to provide such advance payment, it shall be made only upon submission of a proper claim setting



out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures.

- G. The Grantee shall submit to the State written progress reports until the completion of the project. These reports shall be submitted on a [weekly/monthly/quarterly] basis. These reports must detail progress made toward the completion of the Project described in Exhibit A.
- H. If this Grant Agreement is terminated by either party prior to the Expiration of this Grant Agreement, the State may promptly conduct an on-site monitoring of the Project and complete a Project monitoring report.
- I. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to impose sanctions against the Grantee including, but not limited to, suspension of all grant payments, and/or suspension of the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all State funds expended that are not in the scope of this Project or the Budget.
- J. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Grant except as permitted by IC 4-13-2-20 or by the statute authorizing this Grant.

## **6. Audits and Maintenance of Records**

Grantee shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.

## **7. Project Budget and Budget Modification**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The approved Project Budget is set forth as Exhibit \_\_\_\_\_ of this Grant Agreement. The Grantee shall not spend more than the amount for each line item, as described in the Budget, without the prior written consent of a duly authorized representative of the State, nor shall the Project costs funded by this Grant Agreement and those funded by the local and/or private share be amended without the prior written consent of the State.

## **8. Statutory Authority of Grantee**

This clause is specifically for Grants.

The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these monies and it expressly agrees to repay all monies paid to it under this Grant, should a legal determination of its ineligibility be made by any court of competent jurisdiction.

## 9. Use of Grant Funds by Grantee

This clause is specifically for Grants, designating the purpose of the “gift”. Remember that your Exhibit reference may be different than the one included here.

The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with the Budget and for no other purpose.

## 10. Compliance with Laws

You **MUST** include this clause.

- A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant require formal modification.
- B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Grantee certifies by entering into this Grant that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, further work or payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.

Authority to withhold payments is found in IC 4-13-2-14.5 for grantees on the tax warrant list for delinquent taxes.

- D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Grant.
- E. If a valid dispute exists as to the Grantee’s liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Grantee, the Grantee may request that it be allowed to continue, or receive work, without delay. The Grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.

- F. The Grantee warrants that the Grantee and its subgrantees, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant and grounds for immediate termination and denial of further work with the State.
- G. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
  - (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
      - (ii) IC 24-5-12 [Telephone Solicitations]; or
      - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];
 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
    - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

## 11. Drug-Free Workplace Certification

You MUST include this clause. Earlier versions of the Contract Manual referred to a separate certification agreement. We have incorporated the language from the old certification agreement into the language of this clause. This clause replaces any previous Drug-Free language.

The Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Grant amount set forth in this Grant Agreement is in excess of \$25,000.00, Grantee hereby further agrees that this Grant Agreement is expressly subject to the terms, conditions and representations of the following Certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all grants with and grants from the State of Indiana in excess of

\$25,000.00. No award of a grant shall be made, and no grant, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Grantee and made a part of the Grant Agreement as part of the Grant documents.

The Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## **12. Employment Eligibility Verification**

For grants of over \$1,000, you must either include this clause or have the Grantee sign a sworn affidavit that affirms that it has enrolled in the E-Verify program. *See IC 22-5-1.7-11(6)*. If you choose to use the affidavit instead of this clause, you must attach the affidavit to the Grant Agreement.

The Grantee affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Grantee affirms under the penalties of perjury that he/she/it has enrolled and is participating in the E-Verify program as defined in IC 22-5-1-7.3. The Grantee agrees to provide documentation to the State that he/she/it has enrolled and is participating in the E-Verify program. Additionally, the Grantee is not required to participate if the Grantee is self-employed and does not employ any employees.

The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

### 13. Funding Cancellation

You **MUST** include this clause. Even in instances where no dollars are being expended, this is important.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

### 14. Information Technology Accessibility Standards

Any information technology related products or services purchased, used or maintained through this Grant must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

### 15. Nondiscrimination

You **MUST** include this clause. Please see the following section for Grants using federal funding.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**If federal funding is involved with the grant, you must include the following stipulated language.**

The Grantee understands that the State is a recipient of federal funds, and therefore, where applicable, Grantee and any subgrantees agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

### 16. Notice to Parties

Whenever any notice, statement or other communication is required under this Grant, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

Agency contact name and/or title  
Agency name  
Agency mailing address

B. Notices to the Grantee shall be sent to: **(Include contact name and/or title, name of grantee& address)**

Grantee contact name and/or title

Grantee name

Grantee mailing address

C. As required by IC 4-13-2-14.8, payments to the Grantee shall be made via electronic funds transfer in accordance with instructions filed by the Grantee with the Indiana Auditor of State.

## 17. Order of Precedence

This clause must be included if you make reference to a grant application to clarify the duties/expectations of the Grantee. This clause can be extremely important when a problem arises. Word the clause accordingly. If you include this clause in your Grant, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) This Grant Agreement, (2) Attachments prepared by the State, (3) Attachments prepared by Grantee; (4) Invitation to Apply for Grant; and (5) the Grant Application.

## 18. Renewal

If there is the potential that your agency will want to renew the Grant, this clause is **REQUIRED**. As a matter of policy we will retain the four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. Inclusion of this clause in grants does not obligate the State to renew; however, its inclusion may save administrative costs should your agency decide that another year with the Grantee is warranted.

This Grant Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Grant Agreement may not be longer than the term of the original Grant Agreement.

## 19. Termination for Convenience

This Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

## 20. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate clauses (as defined in the 2011 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

---

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

## Non-Collusion and Acceptance

You **MUST** have this clause in your grant agreement. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Grantee, or that he/she is the properly authorized representative, agent, member or officer of the Grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Grant other than that which appears upon the face of this Grant.

**In Witness Whereof**, Grantee and the State have, through their duly authorized representatives, entered into this Grant. The parties, having read and understood the foregoing terms of this Grant, do by their respective signatures dated below hereby agree to the terms thereof.

### Grantee:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### Witness:

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### State of Indiana Agency:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

### Indiana Office of Technology

By: \_\_\_\_\_  
Brian S. Arrowood, Chief Information Officer  
  
Date: \_\_\_\_\_

### Department of Administration

\_\_\_\_\_ (for)  
Robert D. Wynkoop, Commissioner  
  
Date: \_\_\_\_\_

### State Budget Agency

\_\_\_\_\_ (for)  
Adam Horst, Director  
  
Date: \_\_\_\_\_

### APPROVED as to Form and Legality: Office of the Attorney General

\_\_\_\_\_ (for)  
Gregory F. Zoeller, Attorney General  
  
Date: \_\_\_\_\_



This affidavit can be used in lieu of the “Employee Eligibility Verification” clause in grant agreements. If this affidavit is used, it must be attached to the Grant Agreement.

**GRANTEE AFFIDAVIT**  
**Employee Eligibility Verification**  
**For A Grant From A State Agency Of More than \$1000**

The undersigned attests and states, under the penalties of perjury, the following:

1. That he/she/it is the Grantee or the properly authorized representative, agent, member, or officer of the Grantee;
2. That the Grantee is enrolled and participating in the E-Verify program as defined by IC 22-5-1.7-3;
3. That the Grantee will provide to the State documentation that the Grantee has enrolled and is participating in the E-Verify program; and
4. That the Grantee does not knowingly employ an unauthorized alien.
5. That the Grantee understands that the Grantee is not required to participate in the E-Verify program if the Grantee is self-employed and does not employ any employees.

Grantee Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Amendment Development**

### **Reminders**

The Amendment Boilerplate is used to alter the terms and/or conditions of an original contract/grant. An Amendment is also used when the identity of the Contractor/Grantee changes because of a corporate purchase, sale, or other re-structuring. If your agency wishes to modify the terms of the original contract/grant and renew the contract/grant for an additional term, both of these things can be done within an amendment. Please include an Executive Document Summary as the face sheet of your Amendment.

1. Amendments **MUST** be numbered in proper consecutive order.
2. For amendment-renewals, the original start date does not change, only the ending date. Do not include any statement that purports to change the starting date of the contract/grant term.
3. The original contract/grant being modified, and any amendment(s) previously executed, **MUST** be attached to the amendment document. Please include a copy of the original EDS sheet for the contract/grant being modified as well as a copy of the EDS sheet(s) for any amendment(s).
4. Please provide justification for why the original contract/grant must be amended (i.e. why was the additional work being requested not in the original contract/grant? Is the work covered under the amendment in line with the work described in the original contract/grant?).
5. If you are amending the dollar amount of the original contract/grant, please explain the need for the increase/decrease and any deviation from the original rate of compensation. Without a material change in the type or, in some cases, quantity of work to be performed justifying it, a change in the rate of compensation will not be approved.
6. The amendment signature page must duplicate the signature page of the original contract/grant.

### **Amendment/Renewal Checklist**

	<b>Additional funds</b> <ul style="list-style-type: none"><li>→ total must match underlying plus amendment</li><li>→ if budget exhibit, must be updated to include additional funds</li></ul>
	<b>Boilerplate</b> - if missing from original, has new or updated boilerplate (ex. drug-free workplace, ethics, telephone privacy, payments, information technology architecture, employment eligibility verification)
	<b>Copies</b> <ul style="list-style-type: none"><li>→ if more than one copy of the contract, must have original signature (no faxes or photocopies)</li><li>→ if more than one copy of the contract, must have attachments for each copy, if applicable</li></ul>
	<b>Math</b> — does basic math in the contract add up (Ex. per square foot costs, itemized totals, old plus new amounts)
	<b>Non-collusion</b> – should be last paragraph of amendment/renewal
	<b>Signature</b> <ul style="list-style-type: none"><li>→ <i>must</i> be signed prior to end of underlying contract term</li><li>→ must be original (no faxes or photocopies)</li></ul>
	<b>SSNs</b> - should be <i>no</i> visible personal social security numbers in contract, attachments, EDS sheets, or underlying EDS sheets, contracts, or attachments
	<b>Underlying contracts</b> - all underlying contracts and attachments and amendments should be attached

**AMENDMENT # \_\_\_\_\_ / RENEWAL # \_\_\_\_\_**

This is an amendment/renewal to the Contract/Grant (the “Contract”/ “Grant”) entered into by and between the \_\_\_\_\_ (the “State”) and \_\_\_\_\_ (the “Contractor”/ “Grantee”) dated \_\_\_\_\_.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

The Contract/Grant is hereby renewed for an additional period of \_\_\_\_\_. It shall terminate on \_\_\_\_\_, 20\_\_.

The hourly rate for this renewal term is \_\_\_\_\_. Total remuneration under the Contract/Grantee is not to exceed \$ \_\_\_\_\_.

**YOU WILL NEED TO MODIFY TO FIT THE PARTICULAR CIRCUMSTANCES OF THE CONTRACT/GRANT BEING RENEWED.**

The following clauses in the Contract are amended as follows:

**USE THIS LANGUAGE IF RENEWING A CONTRACT.**

**1. Employment Eligibility Verification**

The following clause relating to employment eligibility verification is added to the contract as paragraph \_\_\_\_\_ to read as follows:

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

The following clauses in the Grant Agreement are amended as follows:

<b>USE THIS LANGUAGE IF RENEWING A GRANT AGREEMENT.</b>
---

**1. Employment Eligibility Verification**

The Grantee affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Grantee affirms under the penalties of perjury that he/she/it has enrolled and is participating in the E-Verify program as defined in IC 22-5-1-7.3. The Grantee agrees to provide documentation to the State that he/she/it has enrolled and is participating in the E-Verify program. Additionally, the Grantee is not required to participate if the Grantee is self-employed and does not employ any employees.

The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

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**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

## Non-Collusion and Acceptance

You **MUST** have this clause in your contract/grant. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor/Grantee, or that he/she is the properly authorized representative, agent, member or officer of the Contractor/Grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract/Grant other than that which appears upon the face of this Contract/Grant.

**In Witness Whereof**, Contractor/Grantee and the State have, through their duly authorized representatives, entered into this Contract/Grant Agreement. The parties, having read and understood the foregoing terms of this Contract/Grant, do by their respective signatures dated below hereby agree to the terms thereof.

### Contractor/Grantee:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### Witness:

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### State of Indiana Agency:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

### Indiana Office of Technology

By: \_\_\_\_\_  
Brian S. Arrowood, Chief Information Officer  
Date: \_\_\_\_\_

### Department of Administration

\_\_\_\_\_ (for)  
Robert D. Wynkoop, Commissioner  
Date: \_\_\_\_\_

### State Budget Agency

\_\_\_\_\_ (for)  
Adam Horst, Director  
Date: \_\_\_\_\_

### APPROVED as to Form and Legality: Office of the Attorney General

\_\_\_\_\_ (for)  
Gregory F. Zoeller, Attorney General  
Date: \_\_\_\_\_

## **Renewal Development**

### **Reminders**

Renewals should be used when your agency would like to continue the same terms and conditions of the original contract/grant for an additional term. Renewals cannot contain any modification to the contract/grant.

1. An expired contract/grant cannot be renewed.
2. A contract/grant cannot be renewed if there was not a renewal clause in the original contract/grant nor may it be renewed for a term longer than the original term.
3. When you renew the contract/grant, you are bringing all the original terms and conditions forward for another term (i.e. one additional year and \$10,000 more dollars).
4. Please include an Executive Document Summary (EDS) as the face sheet of your Renewal.
5. Renewals must be numbered.
6. A renewal may allow for an increase in payment only if an increase has been provided for in the original contract/grant.
7. The original contract/grant being renewed **MUST** be attached to the renewal document.
8. The renewal signature page does not require the approval of the Attorney General's Office or the Information Technology Oversight Commission/Indiana Office of Technology.
9. If you only need more time on the contract/grant to complete work in progress, you may want to consider an amendment to extend the term.
10. Two types of renewal language have been offered for your use. **ONLY USE ONE.**
11. We retain a four (4) year limit on renewals, but are willing to discuss longer terms on a case by case basis.

**RENEWAL # \_\_\_\_\_**  
**(For Renewals that DO NOT allow for a price increase)**

Pursuant to IC 5-22-17-4 and the terms of the contract/grant, \_\_\_\_\_ (the "State") exercises its option to renew its contract/grant with \_\_\_\_\_ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated \_\_\_\_\_. The entire contract/grant shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

The total amount of the renewal is the amount owed during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

Total amount of this renewal is \$ \_\_\_\_\_. Total remuneration of this contract/grant is not to exceed \$ \_\_\_\_\_.

**Non-Collusion and Acceptance**

You MUST have this clause in your renewal. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor/Grantee, or that he/she is the representative, agent, member or officer of the Contractor/Grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal, other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract/Grant shall remain in full force and effect.

**In Witness Whereof**, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understood the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor/Grantee:**

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Administration**

**State Budget Agency**

\_\_\_\_\_  
Robert D. Wynkoop, Commissioner

\_\_\_\_\_  
Adam Horst Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RENEWAL # \_\_\_\_\_**  
**(For Renewals that DO allow for a price increase)**

Pursuant to IC 5-22-17-4 and the terms of the contract/grantee, \_\_\_\_\_ (the "State") exercises its option to renew its contract/grant with \_\_\_\_\_ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated \_\_\_\_\_. The entire contract/grant shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

The total amount of the renewal is the amount owed during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

In accordance with the original contract/grant, an increase of \_\_\_\_\_ shall be allowed during this renewal period.

Total amount of this renewal is \$ \_\_\_\_\_. Total remuneration of this contract/grant is not to exceed \$ \_\_\_\_\_.

**Non-Collusion and Acceptance**

You MUST have this clause in your contract/grant agreement. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor/Grantee, or that he/she is the representative, agent, member or officer of the Contractor/Grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract/Grant shall remain in full force and effect.

**In Witness Whereof**, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor/Grantee:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Administration**

\_\_\_\_\_  
Robert D. Wynkoop, Commissioner  
Commissioner  
Date: \_\_\_\_\_

**State Budget Agency**

\_\_\_\_\_  
Adam Horst, Director  
Date: \_\_\_\_\_



## **Contract Addendum Development**

### **Reminders**

When a contractor insists on using his/her own standard contract agreement, you must prepare and attach an addendum. The addendum incorporates the State's standard contract provisions. **DO NOT SIGN THE CONTRACTOR'S FORM**; all parties must sign the State's Addendum Signature Page.

As with the Contract Boilerplate, certain clauses have been designated as **required** and must be included in every addendum. The balance of the clauses is presented for your use and you should include as many as necessary to meet your agency needs.

Due to the way this material is presented, the clauses are not necessarily in order, nor are they numbered. **PLEASE NUMBER YOUR CLAUSES**, either by Roman numeral (I, II) or by Arabic numeral (1, 2). You should also make sure that your references to other contract clauses and attachments are correct.

Please include a completed Executive Document Summary (EDS) as the face sheet of your contract.

Remove the instruction language from the clauses before inserting them in your contract.

Fill in all blanks, even if using N/A.

## **ADDENDUM**

This Addendum is entered into by and between \_\_\_\_\_ (“the State”) and the entity designated as “Contractor” below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the “Form Contract”). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document. Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

Contractor Name:

Contractor Address:

Title of Form Contract:

### **1. Form Contract/Duties of Contractor**

Attached Form Contract consists of \_\_\_\_ pages (with / without) terms on both sides.

### **2. Term**

Contract term begins on \_\_\_\_\_ and ends \_\_\_\_\_.

### **3. Consideration**

Total consideration for term of the Contract Form Contract is \_\_\_\_\_ (\$ xxx,xxx.xx).

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney’s fees
- H. Any provision modifying the statute of limitations provided by Indiana statute.
- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20

- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC 5-14-3-3.5
- L. Any provision giving the Form Contract precedence over this Addendum

The following terms and conditions are incorporated into and made a part of the Form Contract:

#### **4. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this agreement. They shall make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

#### **5. Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of the Form Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under the Form Contract and shall not be made to more than one party.

#### **6. Audits**

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

The following clause should be used as an alternative if Federal funds are passed through to a subrecipient.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

## **7. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Addendum on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Addendum and the Form Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that the Form Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

## **8. Changes in Work**

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## **9. Compliance with Laws**

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Addendum and the Form Contract shall be reviewed by the State and the Contractor to determine whether the provisions of either require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate the Form Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC 4-2-6 and IC 4-2-7.
- C. The Contractor certifies by signing this Addendum, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or the Form Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Addendum and the Form Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on

the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed is a material breach of this Contract and grounds for immediate termination of the Agreement and denial of further work with the State.
- G. The Contractor hereby affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
  - (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
      - (ii) IC 24-5-12 [Telephone Solicitations]; or
      - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
    - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

## **10. Condition of Payment**

All services provided by the Contractor under the Form Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with the Form Contract or performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

## **11. Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected information. The Contractor covenants promises and assures that data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above

in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

## **12. Continuity of Services**

- A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
  - 1. Furnish phase-in training, and
  - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
  - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
  - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

## **13. Debarment and Suspension**

- A. The Contractor certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into the Form Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of the Form Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under the Form Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. The Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the sub-contractor for work to be performed under this Contract.

#### **14. Default by State**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of the Form Contract, then the Contractor may cancel and terminate the Form Contract and institute the appropriate measures to collect all monies due up to and including the date of termination.

#### **15. Disputes**

- A. Should any disputes arise with respect to the Form Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Form Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
  - 1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
  - 2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Form Contract will not be cause for Contractor to terminate the Form Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

#### **16. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Form Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in the Form Contract is in excess of \$25,000.00, the Contractor hereby further agrees that the Form Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

#### **17. Employment Eligibility Verification**

This clause is required by IC 22-5-1.7-11, 12, 13 for all contracts for services.

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.



The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

## **18. Employment Option**

If the State determines that it would be in its best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or employee.

## **19. Force Majeure**

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

## **20. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Form Contract, the Form Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **21. Governing Laws**

This Addendum and the Form Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

## **22. Indemnification**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of the Contract. The State shall **not** provide such indemnification to the Contractor.

## **23. Independent Contractor**

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one

party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees

## **24. Information Technology Enterprise Architecture Requirements**

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate the Form Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

## **25. Insurance**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The

duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State agency prior to the commencement of this Contract.

## **26. Key Person(s)**

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_

## **27. Licensing Standards**

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

## **28. Merger & Modification**

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

## 29. Minority and Women’s Business Enterprises Compliance

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan or subcontractor commitment that may have been submitted to the State. The following MBE’s and WBE’s listed on the Minority and Women’s Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

## 30. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant’s: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

<b>If federal funding is involved with the contract, you must include the following stipulated language.</b>
--

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

### **31. Notices**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

Agency contact name and/or title  
Name of Agency  
Agency mailing address

- B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

Vendor contact name and/or title  
Vendor name  
Vendor mailing address

- C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

### **32. Order of Precedence**

Any inconsistency or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence to this Addendum.

### **33. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under this contract shall be considered “work for hire” and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor’s expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

### **34. Payments**

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Form Contract except as permitted by IC 4-13-2-20.
- B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

### **35. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

### **36. Renewal Option**

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any provision for automatic renewal is void.

### **37. Security and Privacy of Health Information**

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

### **38. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this contract.

### **39. Substantial Performance**

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

### **40. Taxes**

The State is exempt from state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

#### **41. Termination for Convenience**

The Form Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

#### **42. Termination for Default**

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor **fails to:**
  - 1. Correct or cure any breach of this contract;
  - 2. Deliver the supplies or perform the services within the time specified in this contract or any extension;
  - 3. Make progress so as to endanger performance of this contract; or
  - 4. Perform any of the other provisions of this contract.
- B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **43. Travel**

No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-State travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

#### **44. Waiver of Rights**

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed operate as a waiver of any rights under this Contract or of

any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

#### **45. Work Standards**

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

#### **46. State Boilerplate Affirmation Clause**

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as contained in the 2011 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are identified by name below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.
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**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**



### Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Witness:**

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

**Indiana Office of Technology**

By: \_\_\_\_\_  
Brian S. Arrowood, Chief Information Officer  
  
Date: \_\_\_\_\_

**Department of Administration**

\_\_\_\_\_ (for)  
Robert D. Wynkoop, Commissioner  
  
Date: \_\_\_\_\_

**State Budget Agency**

\_\_\_\_\_ (for)  
Adam Horst, Director  
  
Date: \_\_\_\_\_

**APPROVED as to Form and Legality:  
Office of the Attorney General**

\_\_\_\_\_ (for)  
Gregory F. Zoeller, Attorney General  
  
Date: \_\_\_\_\_

**STANDARD TERMS AND CONDITIONS FOR CONTRACTS  
BETWEEN  
THE STATE OF INDIANA  
AND  
STATE INSTITUTIONS OF HIGHER EDUCATION**

These Standard Terms and Conditions for Contract and any amendments hereto shall apply to all contracts for professional services made and entered into between the State of Indiana and any of Indiana's Institutions of Higher Education that have approved of these standard terms as indicated by the signatures below. Each such contract for professional services shall identify the particular departments or units of the both the State and the particular university that are the parties to the contract and shall, where appropriate, identify expressly any of the provisions below that do not pertain to that particular contract for professional services

**1. Duties of Contractor**

The duties of the contractor are set forth on Exhibit A, attached hereto and incorporated fully herein.

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**2. Consideration**

The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \_\_\_\_\_.

**3. Term**

This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

**4. "Separateness" of Contracts between the Parties**

The State acknowledges and agrees that because of the unique nature of state institutions of higher education, the duties and responsibilities of "the Contractor" in these Standard Conditions for Contracts between the State of Indiana and State Institutions of Higher Education and in any contract for professional services are specific to the department or unit of the university identified in the contract for professional services. The existence or status of any one contract between the State and the University shall have no impact on the execution or performance of any other contract and shall not form the basis for termination of any other contract by either party.

**5. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

## **6. Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

## **7. Audits**

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

## **8. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by the Contractor when accepted by the State.

## **9. Compliance with Laws**

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC 4-2-6 and IC 4-2-7.
- C. The Contractor certifies by entering into this Contract, that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that further work may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor

may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that the State may bar the Contractor from contracting with the State in the future, cancel existing contracts.
- H. As required by IC 5-22-3-7:
  - (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
      - (ii) IC 24-5-12 [Telephone Solicitations]; or
      - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
    - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law..

## **10. Confidentiality of Data, Property Rights in Products, Copyright Prohibition and Ownership of Documents and Materials**

Publication and dissemination of the project results are of fundamental importance to both the State and the Contractor. Contractor is free to publish in academic journals, present at symposia, or use any results arising out of the performance of this Agreement for its own internal instructional and research, or publication (i.e. graduate theses and dissertations) objectives. Any publications or presentations referencing the State shall be made in accordance with this Article.

The parties agree that all information, data, findings, recommendations, proposals, etc. by whatever name described and in whatever form secured, developed, written or produced by the Contractor in furtherance of this Contract shall be available to State for its use and distribution at its discretion without additional charge to State. The Contractor shall take such action as is necessary under law to preserve such rights in and of the State while such property is within the control and/or custody of the Contractor. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

Use of these materials, other than related to the contract performance by the Contractor, that includes any reference to the State of Indiana, without the prior written consent of the State, is prohibited. For any purposes outside those contemplated by this Contract, and for which the State's participation will be referenced, the State shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the Agency Head or their designee. That State shall have sixty (60) days to review such requests and will respond in writing to the Contractor. If the State has not responded within sixty (60) days, the request will be deemed approved.

Contractor and State agree that the distribution of proceeds from any commercial licenses for patentable or copyrightable material developed as a result of this Contract, other than publications and presentations outlined in the preceding paragraph, shall be negotiated by the parties and shall be representative of the inputs of each party.

## **11. Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. Therefore, except to the extent required by the Indiana Access to Public Records Act, IC 5-14-3, the Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, and specifically identified as confidential information by the State, will not be disclosed to or discussed with third parties without the prior written consent of the State.

## **12. Debarment and Suspension**

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

## **13. Default by State**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

## **14. Disputes**

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

### **15. Force Majeure**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

### **16. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

### **17. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

### **18. Independent Contractor**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **19. Information Technology Accessibility**

The Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

## **20. Minority and Women Business Enterprise Compliance**

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan or subcontractor commitment that may have been submitted to the State. The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
<hr/>					
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The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

## **21. Nondiscrimination**

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order

11246, which are incorporated herein by specific reference.

## **22. Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

## **23. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

## **24. Taxes**

The State is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

## **25. Work Standards**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals.

## **26. State Boilerplate Affirmation Clause**

The State swears or affirms that it has not altered, modified or changed the State's Boilerplate contract clauses (as defined in the 2011 OAG/ IDOA *Professional Services Contract Manual* - University Contract) in any way except for the following clauses which are named below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

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**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**



## Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

### Contractor:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### Witness:

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### State of Indiana Agency:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

### Indiana Office of Technology

By: \_\_\_\_\_  
Brian S. Arrowood, Chief Information Officer  
Date: \_\_\_\_\_

### Department of Administration

\_\_\_\_\_(for)  
Mark W. Everson, Commissioner  
Date: \_\_\_\_\_

### State Budget Agency

\_\_\_\_\_(for)  
Adam Horst, Director  
Date: \_\_\_\_\_

### APPROVED as to Form and Legality: Office of the Attorney General

\_\_\_\_\_(for)  
Gregory F. Zoeller, Attorney General  
Date: \_\_\_\_\_

## Appendix

### Citation List

Following is a listing of statutory authority for required and/or recommended boilerplate clauses.

<b>Term</b>	<b>Statute</b>	<b>Site</b>
Accessibility Standards	IC 4-13.1-3	<a href="http://www.ai.org/legislative/ic/code/title4/ar13.1/ch3.html">http://www.ai.org/legislative/ic/code/title4/ar13.1/ch3.html</a>
Advance Payments	IC 4-13-2-20	<a href="http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-20">http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-20</a>
Contingency Fee Legal Services	IC 4-6-3-2.5	<a href="http://www.ai.org/legislative/ic/code/title4/ar6/ch3.html#IC4-6-3-2.5">http://www.ai.org/legislative/ic/code/title4/ar6/ch3.html#IC4-6-3-2.5</a>
EDS Sheet		<a href="http://www.in.gov/idoa/2525.htm">http://www.in.gov/idoa/2525.htm</a>
Executive Orders		<a href="http://www.in.gov/gov/2400.htm">http://www.in.gov/gov/2400.htm</a>
Employment Eligibility Verification	IC 22-5-1.7	<a href="http://www.ai.org/legislative/ic/code/title22/ar5/ch1.7.html#IC22-5-1.7">http://www.ai.org/legislative/ic/code/title22/ar5/ch1.7.html#IC22-5-1.7</a>
FMC 98-2		<a href="http://www.in.gov/sba/files/fmc_98-2.pdf">http://www.in.gov/sba/files/fmc_98-2.pdf</a>
Funding Cancellation	IC 5-22-17-5 FMC 2007-1	<a href="http://www.ai.org/legislative/ic/code/title5/ar22/ch17.html#IC5-22-17-5">http://www.ai.org/legislative/ic/code/title5/ar22/ch17.html#IC5-22-17-5</a> <a href="http://www.in.gov/sba/files/fmc_2007-1.pdf">http://www.in.gov/sba/files/fmc_2007-1.pdf</a>
Governing Laws	IC 34-13-2-3	<a href="http://www.ai.org/legislative/ic/code/title34/ar13/ch2.html#IC34-13-2-3">http://www.ai.org/legislative/ic/code/title34/ar13/ch2.html#IC34-13-2-3</a>
Indemnity Prohibition	Ind. Const. Art. X, § 3	<a href="http://www.in.gov/legislative/ic/code/const/art10.html">http://www.in.gov/legislative/ic/code/const/art10.html</a>
Insurance Limits	IC 34-13-3-4	<a href="http://www.ai.org/legislative/ic/code/title34/ar13/ch3.html#IC34-13-3-4">http://www.ai.org/legislative/ic/code/title34/ar13/ch3.html#IC34-13-3-4</a>
Insurance Prohibition	IC 4-13-1-17	<a href="http://www.ai.org/legislative/ic/code/title4/ar13/ch1.html#IC4-13-1-17">http://www.ai.org/legislative/ic/code/title4/ar13/ch1.html#IC4-13-1-17</a>
Non-collusion	IC 5-22-16-6	<a href="http://www.ai.org/legislative/ic/code/title5/ar22/ch16.html#IC5-22-16-6">http://www.ai.org/legislative/ic/code/title5/ar22/ch16.html#IC5-22-16-6</a>
Nondiscrimination	IC 22-9-1-10	<a href="http://www.ai.org/legislative/ic/code/title22/ar9/ch1.html#IC22-9-1-10">http://www.ai.org/legislative/ic/code/title22/ar9/ch1.html#IC22-9-1-10</a>
Payments	IC 4-13-2-14.8	<a href="http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.8">http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.8</a>
“Prepared by” Statement	IC 36-2-11-15	<a href="http://www.ai.org/legislative/ic/code/title36/ar2/ch11.html#IC36-2-11-15">http://www.ai.org/legislative/ic/code/title36/ar2/ch11.html#IC36-2-11-15</a>
Prompt Payment/Interest	IC 5-17-5-1	<a href="http://www.ai.org/legislative/ic/code/title5/ar17/ch5.html#IC5-17-5-1">http://www.ai.org/legislative/ic/code/title5/ar17/ch5.html#IC5-17-5-1</a>
Renewal	IC 5-22-17-4	<a href="http://www.ai.org/legislative/ic/code/title5/ar22/ch17.html#IC5-22-17-4">http://www.ai.org/legislative/ic/code/title5/ar22/ch17.html#IC5-22-17-4</a>
Review for Form	IC 4-13-2-14.3	<a href="http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.3">http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.3</a>

and Legality	IC 4-13-2-14.1	13-2-14.3 <a href="http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.1">http://www.ai.org/legislative/ic/code/title4/ar13/ch2.html#IC4-13-2-14.1</a>
Scanned Contracts from DOA		<a href="https://hr.gmis.in.gov/psp/paprd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST">https://hr.gmis.in.gov/psp/paprd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST</a>
Social Security Disclosure	IC 4-1-10 IC 4-1-11 10 IAC 5	<a href="http://www.ai.org/legislative/ic/code/title4/ar1/ch10.html#IC4-1-10">http://www.ai.org/legislative/ic/code/title4/ar1/ch10.html#IC4-1-10</a> <a href="http://www.ai.org/legislative/ic/code/title4/ar1/ch11.html">http://www.ai.org/legislative/ic/code/title4/ar1/ch11.html</a> <a href="http://www.in.gov/legislative/iac/T00100/A00050.PDF">http://www.in.gov/legislative/iac/T00100/A00050.PDF</a>
Telephone Privacy	IC 5-2-23-7	<a href="http://www.ai.org/legislative/ic/code/title5/ar22/ch3.html#IC5-22-3-7">http://www.ai.org/legislative/ic/code/title5/ar22/ch3.html#IC5-22-3-7</a>

## This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.